
(2009) 10 BOM CK 0018
In the Bombay High Court
Case No : Arbitration Petition No. 570 of 2008

Dr. Vijaypat Singhania and Others	Vs	APPELLANT
Hari Shankar Singhania and Others		RESPONDENT

Date of Decision : 01-10-2009

Acts Referred:

Arbitration Act, 1940 — Section 20
Arbitration and Conciliation Act, 1996 — Section 20, 26, 33, 34, 34(2)

Citation : (2009) 6 BomCR 303 : (2009) 111 BOMLR 4374

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Janak Dwarkadas, Zal Andhyarujina, Shreekant Mehta and Shailesh Shukla, instructed by Malvi Ramnchddas and Co. in Petition No. 6/2009, J.J. Bhatt and Gitanjali Prabhu, instructed by Vigil Juris, in Petition No. 570/2008, for the Appellant; D.D. Madon, Chetan Kapadia, Chakripani Mishra, Vishal Maheshwari and Ameya Gokhale, instructed by Khaitan and Co. for Respondents 1 to 6, J.J. Bhatt and Gitanjali Prabhu, instructed by Vigil Juris, for Respondent Nos. 7 to 13 in 7 Petition No. 6/2009, Janak Dwarkadas, Zal Andhyarujina, Shreekant Mehta and Shailesh Shukla, instructed by Malvi Ramnchddas and Co. for Respondents 7 to 15 in Petition No. 570/2008, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—These are two petitions u/s 34 of the Arbitration and Conciliation Act, 1996 (the Act).

2. An arbitration Award dated 04.08.2008, which is modified on 12.09.2008, has been challenged by the two branches of a Singhania family, the Bombay group and the Kanpur group, as dissatisfied and aggrieved by the 1/3rd share of distribution and partition of the family firm M/s. J.K. Bankers properties. One branch, the Calcutta group supports the same. The Petitioners in Arbitration Petition No. 570 of 2008 are one of the three groups of the Singhania family, a Bombay Group. Respondents 1 to 6 and Respondents 7 to 15 are the other two groups being the Calcutta Group and the Kanpur Group respectively. Arbitration

Petition No. 6 of 2009 is filed by the Kanpur group. The Respondents are other two groups.

3. The background of the family dispute can be gathered from the following events:

4. Late Lala Kamlapat Singhanian started his business at Kanpur many long ago in the name and style of "Juggilal Kamlapat" and in the course of said business acquired, inter alia, several Immovable properties.

5. During Pre1969 the three branches of Singhanian family viz. The Kanpur branch, the Kolkata branch and the Bombay Branch formed a partnership firm in the name of M/s. Juggilal Kamlapat Bankers (M/s. J.K. Bankers)(the firm). The said firm was lastly reconstituted on 21st February 1980 with equal 1/3rd shares in profits and Losses.

6. On 26/03/1987, by a Deed of Dissolution having an arbitration clause, the firm was dissolved by a mutual consent effective from 19th March, 1987. The immovable properties of the firm was agreed to be distributed in specie at book value.

7. On 28/03/1987, a Supplementary Agreement was executed between the three branches recording therein that for the purpose of allotment and distribution of the immovable properties of the dissolved firm the same shall be free from all tenancies, leases or licenses therein that may be subsisting in favour of the group companies, firms, trusts, societies, relatives and family members and that petitioner Nos. 1 to 3 (Arbitration Petition No. 6/2009) would be responsible in respect of Kanpur properties and some respondents and late Ajaypat Singhanian shall be responsible in respect of Bombay properties and that it would not apply to two properties at Kanpur bearing property No. 88/473, Hiranagar Purwa and Property No. 80/80 known as Oil Mills Land except the portion which is in occupation of J.K. Jute Mills Co. Ltd.

8. From 11/11/1987 to 29/09/1989 the correspondences between the three branches exchanged about the distribution and allotment of the immovable properties.

9. On 08.05.1992, an Arbitration Suit u/s 20 of Arbitration Act, 1940 being Suit No. 1904 of 1992 was filed by the Kolkata branch in the Bombay High Court against the other two branches inter alia for appointment of an arbitrator.

10. On 20.02.1996, this Hon'ble Court dismissed the Suit as barred by law of limitation. On 09.04.1996 the Kolkata branch filed an Appeal No. 440 of 1996 (the Appeal).

11. On 20.04.2000 the Kolkata branch filed in Bombay High Court Suit No. 1663 of 2000 without prejudice to the pending Appeal inter alia seeking possession of the Immovable properties of the firm in specie in accordance with the Deed of Dissolution.

12. On 13/01/2003 Shrivats Singhania (Respondent No. 6 herein) filed a similar suit in this High Court being Suit No. 706 of 2003.
13. On 8-9/06/2004, the appeal was also dismissed.
14. On 09.08.2004 the Kolkata branch filed a SLP in the Supreme Court of India being SLP (Civil) No. 16454 of 2004, later converted as an Appeal being Civil Appeal No. 126 of 2005 from the dismissal appeal.
15. On 04/04/2006 the Supreme Court of India by its Judgment and Order inter alia held that the Arbitration Suit No. 1904 of 1992 was not barred by law of limitation and appointed Mr. Justice S. N. Variava, a former Judge of the Supreme Court to act as a Sole Arbitrator in respect of the disputes between the three branches of Singhania family.
16. On 12.05.2006, the Statement of Claim was filed by the Calcutta group (The claimants) before the learned Arbitrator. The separate replies were filed by the other two groups (the Bombay group & the Kanpur group).
17. On 07.09.2006, based on the pleadings and submissions of the parties, the Issues and further issue for determination were framed by the learned Arbitrator.
18. On 20/03/2007, it was agreed upon by the parties by an Agreement that the learned Arbitrator would be required to distribute only the properties described at Items No. 1 to 10 of Annexure II of the Deed of Dissolution on the basis of the market value of the properties. The date of valuation and Valuer were to be decided by the learned Arbitrator. It was further stated that the properties mentioned at Item Nos. 11 to 15 of Annexure II of the Deed of Dissolution are not to be included in the said Agreement. The parties recorded that the properties at Item Nos. 11 and 12 had been sold. An opportunity and the hearing was provided for the parties even before the valuer. The valuer report was agreed to be final and binding.
19. The name of a Valuer were fixed, however, it was later objected to as it was found that this particular Valuer had worked for Respondents 1 to 6 on an earlier occasion. Subsequently, HDFC Limited were appointed as Valuers to value the properties at their respective market values. Date of valuation was decided by the learned Arbitrator to be 20th March 2007.
20. On 13.02.2008 a draft report was submitted by HDFC Limited to the learned Arbitrator in February, 2008. The parties submitted their written representations to HDFC Limited report vide their replies. A meeting was also fixed and oral submissions were made.
21. On 08.03.2008, HDFC Limited submitted its final report to the learned Arbitrator. As alleged by the Bombay group, no opportunity was provided to the parties to cross examine HDFC Limited and/or question the validity of the report in terms of the objections raised by the parties. The Arbitrator rejected such objections/submissions.

22. On 31.03.2008, a letter No. 3585/147 was issued by the office of the Divisional Director, Forest Department, Kanpur, U.P. Addressed to Dr. Gaur Hari Singhania, respondent No. 7 (Arbitration Petition No. 570/2008) herein whereby item No. 6 of Annexure 2 of the Deed of Dissolution being Kamla Retreat Kanpur was identified as a "Forest Like area."

23. On 08.05.2008, further written submissions were filed by the Bombay group, before the learned Arbitrator.

24. On 04/08/2008, the learned Arbitrator passed the Award whereby the immovable properties have been partitioned amongst the three groups. The sole Arbitrator gave his Award whereby some properties at Kanpur were allotted to the Kanpur branch and some properties at Kanpur were allotted to the Bombay branch and the properties at Bombay were allotted to the Kolkata branch with direction/order for payment of equal amount.

25. On 19/08/2008 , the Calcutta group through their Advocates" letter requested the sole Arbitrator to make certain clerical and typographical corrections of the errors in the Award dated 4th August, 2008. On 23-28/08/2008, the Kanpur group and the Bombay group vide their Advocates" letter informed the sole Arbitrator that they had no objection to the corrections suggested but requested for the some changes in the title.

26. On 29/08/2008, the Bombay group also vide their Advocates" letter sought certain clarifications and interpretation of the Award u/s 33 of the Act. The meeting was called for on 10/09/2008. On 12/09/2008 the sole Arbitrator clarified and modified the Award.

27. On 8/12/2008 being aggrieved by the Awards dated 4th August, 2008 and 12th September, 2008, the Bombay group and the Kanpur group have filed the Petition (Arbitration Petition Nos. 570/2008 and 6/2009) u/s 34 of the Act. As per order of the Hon"ble Chief Justice, both the matters were placed before me for hearing. As common award and the parties are involved, by consent heard finally and therefore, also the common Judgment.

28. Strikingly, the Apex Court, in the litigation between the parties, Hari Shankar Singhania and Others Vs. Gaur Hari Singhania and Others, , by a detailed Judgment has expressed as under:

On limitation:

Therefore, we observe that the right to apply u/s 20 of the Arbitration Act, 1940 accrued to the appellants only on the date of the last correspondence between the parties and the period of limitation commences from the date of the last communication between the parties. Therefore, the finding of the High Court that the application u/s 20 of the Arbitration Act, 1940, is beyond the period of limitation is erroneous.

On the ground of Family arrangement/ family settlement:

Another fact that assumes importance at this stage is that, a family settlement is treated differently from any other formal commercial settlement as such settlement in the eyes of law ensures peace and goodwill among the family members. Such family settlements generally meet with approval of the Courts. Such settlements are governed by a special equity principle where the terms are fair and bona fide, taking into account the well being of a family.

The consent of "family arrangement or settlement" and the present one in hand, in our opinion, should be treated differently. Technicalities of limitation etc. should not be put at risk of the implementation of a settlement drawn by a family which is essential for maintaining peace and harmony in a family. Also it can be seen from decided cases of this Court that, any such arrangement would be upheld if family settlements were entered into ally disputes existing or apprehended and even any dispute or difference apart, if it was entered into bona fide to maintain peace or to bring about harmony in the family. Even a semblance of a claim or some other ground, as say affection, may suffice as observed by this Court in the case of Ram Charan Das Vs. Girjanandini Devi and Others, .

The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement.... The law in England on this point is almost the same.

The valuable treatise Kerr on Fraud at p. 364 explains the position of law, "the principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromise in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend." Halsbury's Laws of England, Vol. 17, Third edition at pp. 215-216.

In K.K. Modi Vs. K.N. Modi and Others, [Sujata Manohar & DP Wadhwa, JJ.], it was held that the true intent and purport of the arbitration agreement must be examined[para 21] Further the court examined that "...a family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has been already acted upon by some members of the family. In the present case, from 1989 to 1995 the Memorandum of Understanding has been substantially acted upon and hence the parties must be held to the settlement which is in the interest of the family and which avoids disputes between the members of the family. Such settlements have to be viewed a little differently from ordinary contracts and their internal mechanism

for working out the settlement should not be lightly disturbed.

Therefore, in our opinion, technical considerations could give way to peace and harmony in enforcement of family arrangement or settlements.

29. It is also observed to settle the matter and expedite the distribution as early as possible. It is also recorded that "it is an admitted fact that the three branches of Singhanian family are each entitled to 1/3rd share in immovable properties." The points of differences were referred, after appointing Hon"ble Mr. Justice S.N. Variava (Retired Judge of Supreme Court) as a sole Arbitrator to decide the dispute between the parties, within a period of six months from the date of entering upon the Reference. The points for Reference were recorded.

30. The learned Arbitrator, after considering the rival contention, as well as, material placed on record, framed the following issues:

1. Whether the claims as set out in the Statement of Claim are barred by the law of limitation?
2. Whether the Arbitral Tribunal is prevented from proceeding with this arbitration on account of the fact that the Claimants have filed Suits Nos. 1663 of 2000 and 706 of 2003 before the Hon"ble Bombay High Court?
3. Whether this Arbitral Tribunal has jurisdiction to entertain the claim for damages and/or interest as set out in paragraph 11 and prayer (e) of the Statement of Claim and if so whether the Claimants are entitled to damages and interest and to what extent?
4. Whether Respondent Nos. 1 to 9 are under an obligation to have the properties at Kanpur vacated and free from encumbrances as set out in paragraph 8(b) of the Statement of Claim?
5. Whether the Arbitral Tribunal is required to take into account the occupation of properties belonging to the partnership firm, by various Respondents, while ordering their allotment and distribution in specie, between the Claimants and the Respondents?
6. Whether Respondent Nos. 1 to 9 prove that they have incurred expenses on the said properties?
7. Whether Respondent Nos. 1 to 9 are entitled to offset the expenses allegedly incurred by them on the said properties against the amounts payable to the Claimants as and by way of damages and/or interest?
8. Whether the Arbitral Tribunal has jurisdiction to entertain any claim pertaining to any properties not set out in Annexure II to the Deed of Dissolution dated 26th March, 1987?
9. Whether the Claimants are entitled to the relief's prayed for in the Statement of Claim? 4A. Whether the Respondent Nos. 10 to 16 are also under obligation to have the property at Juhu, Mumbai vacated and free from encumbrances?

(Added on 3rd October, 2006)

31. It is recorded in the agreement dated 20th March, 2007 between the parties to settle the matter amicably. The Arbitrator has noted the same in paragraph 9 is as under:

9. Various meetings were held in order to see whether the family could settle the disputes amicably. Initially parties could not agree on anything. They could not agree on the values which should be put on the properties. They could not even agree on the manner in which the valuation was to be done or the date, which should be taken, for purposes of valuation. Ultimately however, thanks solely to the efforts of the Counsel/Advocates representing the parties, better sense prevailed and an Agreement dated 20th March, 2007 was entered into. This Agreement reads as follows:

AGREEMENT

With reference to the Arbitration pending before the Hon"ble Arbitrator, Mr. Justice S.N. Variava, Former Judge, Supreme Court of India, in relation to the distribution of the properties described at items 1 to 10 set out in Annexure II to the Deed of Dissolution dated March 27, 1987, the parties have agreed that the properties will be distributed on the basis of market value and the date of valuation and the Valuer would be decided by the Hon"ble Arbitrator. The Valuer will hear the parties before giving his report.

It is clarified that the properties mentioned at items 11 to 15 of the said Annexure II are not to be included in this Agreement. Parties agree that the property at Item 11 is sold, the properties at items 12,13 and 15 are to be sold and proceeds distributed. The property at item 14 is not part of this Agreement.

All other contentions of the parties, except the valuation at market value, are kept open.

Thus, what now remained was getting the 10 properties valued and then distributing the same. With the consent of all the parties directions were passed on 2nd November, 2006 that the property at Sr. No. 12 above i.e. 363, Harish Gunj, Kanpur, be sold and the price thereof be distributed amongst the parties in accordance with their share. This property has since been sold and the money distributed to the heads of each group. Also it must be noted that parties had agreed that distribution was to only of properties at Sr. Nos. 1 to 10 above. In respect of the properties at Sr. Nos. 13 and 15 the parties had agreed, amongst themselves, that they would separately deal with these properties in consultation with Shri Hemantpat Singhania who had a 50% share in these properties. The lease of the property at Sr. No. 14 had already run out and the same was supposed to be returned to the landlord. Thus this property was also excluded from this proceeding and parties have agreed that they will deal with it by themselves. This Arbitration thus proceeded in respect of the properties at Sr. Nos. 1 to 10 only."

32. The learned Arbitrator, considering all the issues as referred above, by award dated 4th August, 2008, has partitioned the properties as under:

a) The Claimants are allotted the property at Sr. No. 5 i.e. Kamala Cottage, Property No. 6 at Juhu, Mumbai. As the market value of this property is fixed at Rs. 89.66 crs. and each group is entitled to assets worth Rs. 43,55,00,000/the Claimants will have to bring into the pool of the family, in the manner set out hereafter, a sum of Rs. 46,11,00,000/. This then will have to be distributed amongst the other two groups as per their entitlement.

b) Respondents 1 to 9 are allotted the following properties at the prices mentioned below:

i) Property at Sr. No. 1 i.e. Property No. 29/1 at Kanpur known as Kamla Towers. The value of this property is fixed at Rs. 4 Crs.

ii) Property at Sr. No. 2 i.e. Property No. 22/134 at Kanpur known as J.K. Kothi. The value of this property is fixed at Rs. 1.63 crs.

iii) Property at Sr. No. 3 i.e. Property No. 11 at Cantt., Kanpur, known as Ganga Kuti. The value of this property is fixed at Rs. 10.44 crs.

iv) Property at Sr. No. 4 i.e. Property No. 6 at Cantt., Kanpur. The value of this property is fixed at Rs. 4.54 crs.

v) Property at Sr. No. 9 i.e. Property No. 20/193 Chatai Mohal, Kanpur. The value of this property is fixed at Rs. 0.23 crs.

Thus properties worth Rs. 20.84 crs. are allotted to Respondents 1 to 9. As they are entitled to assets worth Rs. 43,55,00,000/they will, in addition to the above, receive a sum of Rs. 22.71crs. from out of the sum of Rs. 46,11,00,000/which has to be brought in by the Claimants. They will receive this amount only against delivery of vacant possession, free from encumbrances, of all the properties allotted to Respondents 10 to 16. In other words it will not be open to them to receive a part of this sum of Rs. 22.71 crs. on the ground that they have handed over vacant possession of some of the properties.

c) Respondents 10 to 16 are allotted the following properties at the prices mentioned below:

i) Property at Sr. No. 6 i.e. Property No. 37, Kanpur known as Kamla Retreat. The value of this property is fixed at Rs. 9.62 crs.

ii) Property at Sr. No. 7 i.e. Property No. 88/473, Hiranagar, Kanpur. The value of this property is fixed at Rs. 2 crs.

iii) Property at Sr. No. 8 i.e. Property No. 80/80, Kanpur known as Oil Mills land. The value of this property is fixed at Rs. 7.90 crs. & Rs. 0.30 crs.

iv) Property at Sr. No. 10 i.e. Property No. 20/131 Patkapur, Kanpur. The value of this property is fixed at Rs. 0.33 crs.

Thus Respondents 10 to 16 are allotted properties worth Rs. 20.15 crs. As they are entitled to assets worth Rs. 43,55,00,000/they will, in addition to the above, receive a sum of Rs. 23.40 crs. from out of the sum of Rs. 46,11,00,000/which has to be paid by the Claimants. They will receive this amount only on handing over vacant possession, free from encumbrance, of the Juhu property to the Claimants.

33. The learned Arbitrator has also issued various directions in following terms:

27. Respondents 1 to 9 are in possession of the properties at Kanpur. Respondents 1 to 9 are directed to vacate and/or get vacated the property at Sr. 6, the portion of the property at Sr. No. 8 which is possession of J. K. Oil Mills & the property at Sr. No. 10 at Kanpur and hand over vacant possession of the same, free from encumbrances to Respondents 10 to 16 within a period of 6 months from today. Clarified that the properties at Sr. Nos. 7 & 8 (not in possession of J.K. Oil Mills) are not to be handed over free from encumbrances but are to be handed over on "as is where is basis". As these properties stand partitioned and allocated to Respondents 10 to 16 by this Award, Respondents 10 to 16 will be entitled to have their names, or the name of such other person as they nominate, mutated in the record of rights on the basis of this Award. The Claimants and the Respondents shall immediately jointly write to all the tenants that they must attorn tenancy to Respondents 10 to 16. All parties are directed to execute such writings or documents and do all such acts as are required for the purposes of having these properties mutated into the names of Respondents 10 to 16 or such other person as they nominate.

28. Respondents 10 to 16 are in possession of the Juhu property. Respondents 10 to 16 are directed to vacate the Juhu property and hand over vacant possession, free from encumbrances, to the Claimants within a period of 6 months from today. As these properties stand partitioned and allocated to Claimants by this Award they will be entitled to have their names or the name of such other person as they nominate mutated in the record of rights on the basis of this Award. All parties are directed to execute such writings or documents and do all such acts as are required for the purposes of having these properties mutated into the names of the Claimants or such other person as they nominate.

29. It must be mentioned that the 6 months period is granted as during submissions, on a query from the Tribunal, it was stated on behalf of the parties that they would require 6 months to vacate. As the period appears to be reasonable the parties are granted this time to vacate or get vacated the properties. It is however clarified that by this Award the properties already stand partitioned. From the date of this Award the party to whom a property is allotted is the owner of that property. Parties who have to vacate or get properties vacated i.e. Respondents 1 to 9 and Respondents 10 to 16 must confirm in writing, within 1 month from today, that they will be vacating or getting vacated the properties within the period of 6 months granted to them. If no such written intimation is given, the party to whom the property is allotted will be entitled to

presume that possession will not be handed over and can immediately thereafter apply for execution of the Award. If no notice is given then the date of breach will be deemed to be immediately on the period of 1 month, from the date of the Award, getting over. If written notice is given acknowledging that possession will be handed but at the end of six months possession is not handed over the date of breach will be immediately on the six months period, from the date of the Award, getting over.

30. As parties are granted 6 months time to vacate, the amounts receivable by them will only be received at the time they vacate the property in their possession and/or all the properties in their possession and hand them over free from encumbrance. Similarly the sum of Rs. 46,11,00,000/(Rs. 89.66 crs. less Claimants share of Rs. 43.55 crs.) which has to be brought in by the Claimants will become payable on the date that the Claimants receives vacant possession of the Juhu property. In other words the payment is to be against possession of the property and/or possession has to be against payment. Clarified that one group of Respondents not handing over vacant possession will be no ground for another group not handing over vacant possession. In the event of Claimants getting possession of the Juhu property they will bring in the sum of Rs. 46,11,00,000/ and Respondents 10 to 16 will be entitled to receive the sum of Rs. 23.40 crs. However, if Respondents 1 to 9 have not handed over vacant possession of all the properties to Respondents 10 to 16 then they will not be entitled to receive the sum due to them till they hand over vacant possession of all the properties. In that event the sum of Rs. 22.71 crs will be kept in escrow in a joint account of the three attorneys" i.e. M/s. Khaitan & Co., M/s. Malvi Ranchoddas & Co. and M/s. Vigil Juris. The attorneys may keep the sum invested for such periods as they consider necessary. The amount will only be handed over against vacant possession of all the properties allotted to Respondents 10 to 16 being delivered to them free from encumbrance.

31. By this Award the properties are partitioned and parties are bound to hand over vacant possession free from encumbrance. Before concluding it must be observed that the Supreme Court has interalia observed as follows:

It is thus seen that the above facts would clearly go to show that the contesting Respondents Nos. 1-9 are not at all interested in any conciliation, mediation or arbitration but only interested in enjoying the bulk of the immovable properties of the firm and refusing to carry out their obligations under and pursuant to the Deed of Dissolution by permitting the distribution of properties in specie and free from encumbrance as contemplated by the said Deed of Dissolution dated 26.03.1987 and the supplementary agreement dated 28.03.1987.

This Tribunal has also noticed that parties in possession have shown reluctance to hand over possession. As stated above Respondents 1 to 9 have without any justification claimed and are still claiming that they are entitled to all properties in Kanpur and/ or in any event the properties at Sr. Nos. 1,2,3 and 6 must be allotted to them. They have not been allotted property at Sr. No. 6. Respondents

10 to 16 have also indicated reluctance to part with the Juhu property. However, it is now hoped that the parties will heed the good advice tendered by the Supreme Court i.e.:

Conclusion: Better late than never

We have already referred to the concept of family arrangement and settlement. Parties are members of three different groups and leading business people. We, therefore, advise the parties instead of litigating in Court they may as well concentrate on their businesses and, at the same time, settle their disputes amicably which, in our opinion, is essential for maintaining peace and harmony in the family. Even though the parties with a good intention have entered into the Deed of Dissolution and to divide the properties in equal measure in 1987, the attitude and conduct of the parties have changed, unfortunately in a different direction. Therefore, it is the duty of the Court that such an arrangement and the terms thereof should be given effect to in letter and spirit. The appellant and respondents are members of the family descending from a common ancestor. At least now, they must sink their disputes and differences, settle and resolve their conflicting claims once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family.

34. The award was modified slightly on 12th September, 2008.

35. So far as the point of limitation is concerned, in view of the above observations made by the Hon'ble Supreme Court that the suit filed by the claimants was well within the time and thereafter referred the dispute to the Tribunal. The learned Arbitrator accordingly, held that the claims are not barred by the law of limitation, needs no further discussion.

36. The Supreme Court in (Harishankar) (Supra) has observed as follows:

At the time of hearing, it was argued by learned senior counsel for Respondents 1-9 that since the appellants have filed the suit, the same may be continued by the appellants and direction be issued to the Court concerned to dispose of the same within a particular time frame. In reply, it was submitted that the suit was filed by the appellants without prejudice to their rights and contentions under the arbitration clause in the agreement and that the arbitration is the only effective and quick remedy. We have extracted Clause 13 of the arbitration agreement which enabled the parties to go for arbitration in case there was a dispute between them. It has now come to a stage that the real dispute has arisen between the parties. Already the matter is pending adjudication from 1987 onwards, Respondents Nos. 1-9 are admittedly in possession and enjoyment of valuable immovable properties depriving the valuable rights of the appellants and the other Respondents Nos. 10-20. We should not, therefore, allow Respondents Nos. 1-9 to drag the proceedings any further. Parties had to settle their disputes one day or the other. In our opinion, the time has now come to nominate a single Arbitrator as provided under Clause 13 of the agreement. It was argued that in case this Court allows the appeal, the matter may be remitted to the High Court

for appointment of a single Arbitrator and in case the parties are unable to agree upon a single Arbitrator a panel of three Arbitrators shall be appointed as provided in the said agreement. We feel that such a course, if adopted, would only enable the contesting Respondents Nos. 1-9 to squat on the property and enjoy the benefits, income etc. arising there from.

37. The learned Arbitrator, therefore, rightly proceeded with the matter by recording the undertaking, that the suit will be withdrawn on the receipt of the award. Therefore, once the matter referred by the Supreme Court, in spite of the pending suits and the parties proceeded accordingly, and now the award is passed, I see there is no reason to reopen the same issue again, only because the said suit is not yet withdrawn. Having once referred the matter by the Supreme Court and recorded the undertaking by the learned Arbitrator and the parties have agreed accordingly, in my view, the said suit after this award, need to be treated as deemed to have been withdrawn. Now, the parties are not permitted to take different and/or opposite plea with regard to the withdrawal of the suit. The award cannot be stated to be bad or illegal on that count alone as submitted.

38. The Arbitrator has answered issue Nos. 3,6 and 7 as under, which also need no interference; as the future remedies are also provided to the parties in case of default.

ISSUE Nos. 3,6 & 7:

17. Parties had raised these Issues. However no evidence in support of these Issues has been led. Fairly Counsel have not made any submissions on these Issues. As there is no evidence this Tribunal is not entertaining the Claim for damages and thus the question of deciding whether it has jurisdiction to entertain such a Claim does not arise. Similarly, for lack of evidence, the Claim of Respondents 1 to 9 to expenses incurred, even if incurred by them, is not considered and/or granted. I however, clarify that merely because no damages or mesne profits are being granted for a period prior to the date of the Award it shall not preclude the Claimants and/or Respondents 10 to 16 from claiming mesne profits or damages if vacant possession, free from encumbrance, of properties hereby allotted to them is not handed over to them. Further it is possible that, not handing over vacant possession free from encumbrance, may result in some other group, who has handed over possession, not receiving the cash equivalent it is entitled to. Clarified that this Award does not preclude the right of that group to claim damages or interest from the group in default. Claims of this nature, if made, will undoubtedly be decided on their own merit.

39. Issue No. 8 is answered as under, also needs no interference.

ISSUE No. 8:

18. This Issue does not survive as this Tribunal is not entertaining any claim in respect of any property not set out in Annexure II to the Deed of Dissolution dt.

21st February, 2008".

40. The other issues which are decided together are 4, 4A, 5 and 9.

As noted, the long pending family dispute pursuant to the order passed by the Hon'ble Supreme Court with direction, considered the family arrangement and the agreed terms, and settled the matter expeditiously, on available material on the record. The learned Arbitrator, thereafter gave insightful reasoning in para 22 to 25 and accordingly partitioned the properties as under:

22. Of course in a case like this it is impossible to exactly divide in specie as that would mean physical division of some of the properties. None of the parties have asked for such a physical division. Therefore, even though distribution is in specie there will have to be equalization in terms of money. As per the valuation done by HDFC Ltd. the total value of all the 10 properties is Rs. 1,30,65,00,000/-. Each group has a 1/3rd share. Thus, each group would be entitled to properties worth Rs. 43,55,00,000/-. However the Juhu property is itself worth Rs. 89.66 crs. Thus the party to whom the Juhu property is allotted will have to pay a sum of Rs. 46,11,00,000/which would have to be distributed between the other two groups considering the value of the properties allotted to them. The total value of all the properties at Kanpur is Rs. 40.99 crs. Respondents 1 to 9 are in possession of all the properties at Kanpur and they desire that all the Kanpur properties be allotted to them. However, both the Claimants as well as Respondents 10 to 16 desire that, if the Juhu property is not allotted to them, then they be given some property in Kanpur. As has been set out above Respondents 1 to 9 contend that if any of the other group is to be allotted some property at Kanpur then it can only be properties other than those at Sr. No. 3 above (i.e. Property No. 11, Ganga Kuti, Cantonment); at Sr. No. 6 above (i.e. Property No. 37, Kamla Retreat); at Sr. No. 1 above (i.e. Property No. 29/1, Kamla Tower) and at Sr. No. 2 above (i.e. Property No. 22/134 J.K. Kothi). On the other hand both the Claimants as well as Respondents 10 to 16 are willing to allow Respondents 1 to 9 to retain the properties at Sr. Nos. 1, 2 & 3 above. They however, insist that the property at Sr. No. 6 i.e. Property No. 37, Kamla Retreat be allotted to one of them depending on who does not get the Juhu property. Thus both the Claimants and Respondents 10 to 16 are keen that one of them be allotted this property.

23. Having heard the parties and considered their submissions I now partition the properties amongst the 3 groups as follows. As the Juhu property is the most valuable it would be better to first allot this property. It cannot go to Respondents 1 to 9 as they are in possession of and want to be allotted, properties in Kanpur. Respondents 10 to 16 want to retain possession of the Juhu property but are not willing to accept allotment of this property at Rs. 89.66 crs. The Claimants are willing to accept allotment of this property at this price. Respondents 1 to 9 are willing that the Juhu property be allotted to Claimants at this price. As stated above Respondents 10 to 16 contend that allotment, at this price to claimants will be unfair. Such a contention is rejected for reasons set out

above. When one group is willing to accept allotment at Rs. 89.66 crs. there is no justification in Respondents 10 to 16 expecting that this property be allotted to them at a lower price. Such an expectation is absolutely unreasonable and unjustified. Contention of Respondents 10 to 16 that the property has been grossly overvalued has been rejected. Also if according to them it is overvalued then they should be happy that some other group is accepting this property at this price. Their share will increase and they cannot thus complain. Thus the Juhu property is allotted to the Claimants at Rs. 89.66 crs. As the share of each group is Rs. 43,55,00,000/, and Claimants are being allotted a property worth Rs. 89.66 crs., the Claimants will have to bring in a sum of Rs. 46,11,000/which will then be divided between the other two groups depending on the value of the properties allotted to them. The amount will be brought in against possession of the Juhu property.

24. All the Kanpur properties have been valued at Rs. 40.99 crs. As the properties are to be distributed in specie and equitably, each of the other two groups would be entitled to properties worth app. Rs. 20.49 crs. The balance entitlement would have to be compensated for in terms of monies. The Kanpur properties are as follows: The properties at Sr. Nos. 1 & 2 are the office premises, where the offices of the businesses run by Respondents 1 to 9 are situated. They have been valued at Rs. 4 crs and Rs. 1.63 crs. resp.; The property at Sr. No. 3 is the residence of Respondents 1 to 9. It is valued at Rs. 10.44 crs.; The property at Sr. No. 4 is a large piece of land in the Cantonment area. It is occupied by staff of J.K. Cement. The structure on the property, as per the valuation report, is in a dilapidated condition. Being in the Cantonment area no new construction is permitted. It is valued at Rs. 4.54 crs. The property at Sr. No. 6 has been valued at Rs. 9.62 crs.; The property at Sr. No. 7 is fully in occupation of outsiders. It has been agreed that this is not to be allotted free from encumbrance. It has been valued at Rs. 2 crs.; The property at Sr. No. 8 is also in possession of outsiders, except for a small portion which is in possession of J.K. Oil Mills. The property in possession of outsiders is valued at Rs. 7.90 crs.; whereas the portion in possession of J.K. Oil Mills is valued at Rs. 0.30 crs.; The property at Sr. No. 9 is a cycle stand where the workmen of Respondents 1 to 9 park their cycles. It is valued at Rs. 0.23 crs.; The property at Sr. No. 10 was found by, HDFC Ltd, to be occupied by tenants. It has been valued at Rs. 0.33 crs.

25. On these facts one will now have to consider how the Kanpur properties are to be distributed. Claimants, having already been allotted a property worth Rs. 89.66 crs., are not entitled to any more property. Thus, the distribution has to be between the groups of Respondents 1 to 9 and Respondents 10 to 16. In their written submissions Respondents 10 to 16 have stated:

It is submitted that parties have not given up the plea of distribution of properties in specie. Moreover, the properties being of sentimental value to the parties ought to be distributed in specie.... It is further submitted that it is

nobody's case that properties cannot be distributed in specie. It is therefore submitted that the properties must be distributed in specie on the basis of fair market valuation.

Thus Respondents 10 to 16 claim that the properties at Kanpur are of sentimental value to them. They also insist that the distribution must be in specie and on the basis of fair market value. Their insistence is in consonance with the Clauses of the Partnership Deed as well as the Deed of Dissolution. The distribution has to be in species. All the Kanpur properties have been valued at Rs. 40.99 crs. Thus properties worth app. Rs. 20.49 crs. would go to the share of each of these groups. As stated above according to Respondents 10 to 16 all the Kanpur properties have been under valued by HDFC Ltd. Their objection to valuation has already been rejected. But it must be mentioned that they cannot complain if they are allotted some of the properties at a price which according to them is low. On the other hand Respondents 1 to 9 have claimed that some of the properties are over valued. Their objection has already been overruled but it follows that Respondents 1 to 9 can have no complain if the properties, which according to them, are over valued, are allotted to Respondents 10 to 16 at that price. Of course, as set out above Respondents 1 to 9 would like to keep all the Kanpur properties and particularly the properties at Sr. Nos. 1,2,3 and 6 above. However, merely because Respondents 1 to 9 are in Kanpur and are using all the properties would not be a ground to allow them to keep all the good and useful properties and insist that other properties be allotted to other groups. These are family properties. All have an equal right to the properties. Respondents 1 to 9 are lucky. Both the Claimants and Respondents 10 to 16 are, probably out of love and affection, willing to that Respondents 1 to 9 be allowed to retain the properties at Sr. No. 1,2 and 3 above i.e. Property No. 11, Ganga Kutti, Cantonment; Property No. 29/1, Kamla Tower and Property No. 22/134 J.K. Kothi. The Claimants and Respondents 10 to 16 are willing that these properties be allotted to them. Thus, Respondents 1 to 9 are being permitted to retain their residence and their office buildings. They are therefore allotted these properties at the price fixed by HDFC Ltd. The value of these properties comes to Rs. 16.07 crs. The property at Sr. No. 9 is merely a cycle stand where the workmen of Respondents 1 to 9 park their cycles. This has to be and is allotted to Respondents 1 to 9. This property is valued at Rs. 0.23 crs. Thus the value of properties hereby allotted to Respondents 1 to 9 comes to Rs. 16.30 crs. As they are entitled to properties worth app. Rs. 20.49 crs. a property worth app. Rs. 4 crs. can be further allotted to them. The property at Sr. No. 4 i.e. Property No. 6 at Cantonment, Kanpur is occupied by staff of J.K. Cement. It is valued at Rs. 4.54 crs. The total value of the properties at Sr. Nos. 1,2,3,4 and 9 comes to Rs. 20.84 crs. This is a little more than their entitlement on an equitable distribution. However this will enable distribution without having to physically divide any property. The rest of the properties at Kanpur are worth Rs. 20.15 crs. As Respondents 10 to 16 are also entitled to, properties worth app. Rs. 20.49 crs. on an distribution in specie they are entitled to be allotted all the other

properties at Kanpur. As stated above, Mrs. Mody had submitted that Respondents 1 to 9 must be allotted even the property at Sr. No. 6 i.e. Property No. 37 known as Kamla Retreat. Even though Respondents 1 to 9 now try to deny it, this property is effectually a guest house. HDFC Ltd. have also found that it is being used as a guest house. Mrs. Mody had also submitted that all the guest of the companies run by Respondents 1 to 9 are kept in this property. This itself shows that it is a guest house. Respondents 1 to 9 cannot expect to keep this property merely because they want to keep their guests there. I am sure there are enough hotels in Kanpur where their guests can be put up. Also Dr. Gaur Hari Singhania and his son Mr. Yadupati Singhania cannot claim a right to continue to use this property for their office work when they have enough other places in Kanpur from which they can do their office work. In my view, both Mr. Madon and Mr. Dada are right in their submission that Respondents 1 to 9 can be allotted the properties in Kanpur at Sr. Nos. 1,2 and 3 but this property has to go to some other branch. This property has been valued at Rs. 9.62 crs. If Respondents 1 to 9 were to get this property in addition to the properties at Sr. Nos. 1,2 and 3 the value of the properties coming to their share would go way beyond their entitlement of Rs. 20.49 crs. It would then lead to an absolutely inequitable distribution in specie. Even otherwise this is the only other worthwhile property in Kanpur which can be used and enjoyed by a family member who is outside Kanpur. The other properties being allotted to Respondents 10 to 16 are the properties at Sr. Nos. 7, 8 and 10. The Property at Sr. No. 7 is fully tenanted and is not to be delivered free of encumbrances. Property at Sr. No. 8 is also fully tenanted, except for a small portion which is in possession of J.K. Oil Mills. Only the portion in possession of J.K. Oil Mills is to be delivered free from encumbrances. The value of that portion is only Rs. 0.30 crs. The property at Sr. No. 10 is in a densely populated area having very narrow roads. As per HDFC Ltd. Report a major portion of it is tenanted. Thus effectively the only property at Kanpur, apart from properties at Sr. Nos. 1,2 & 3 which can be used / enjoyed by family members, is the property at Sr. No. 6. If Respondents 1 to 9 are being allotted the other three properties, as per their wishes, they must then in the spirit of family settlement, not insist that the property at Sr. No. 6 be also allotted to them. Their demand for this property is against the spirit of a family settlement and is also unjustified and unfair. This property must be and is allotted to Respondents 10 to 16.

The above well expressed thoughtful detailed reasoning, based upon the given facts and circumstances need no disturbance or interference.

41. One cannot overlook the aspect that in a partition proceeding like this, where the parties just don't want to vacate their respective very premises, on the contrary want to retain the same having sentimental value and to adjust their respective shares of the properties, in such circumstances, it is difficult to divide the property or partition the property, though there is no dispute about 1/3rd share of each family/branch. To divide the property in specie as sought, and as agreed, is not possible because of the respective rival contentions and difficulty

in physical division of such properties. It is not possible to grant arithmetically calculated or exact division and the distribution, but still so made by the learned Arbitral Tribunal, in my view, is well within the frame work of record. There is no illegality or perversity in the order so passed. It is willingness and desire of the parties to settle the family matter amicably, plays an important role and not the technical and intended opposition which is only to delay and to avoid the settlement of long pending property dispute.

42. As noted, the Calcutta group is supporting the award. The challenge to the same is made by the Kanpur group and the Bombay Group. As agreed, 1/3 share of respective group has been taken note of by the learned Arbitrator, based upon the valuation made and as recorded by consent of the parties. The learned Arbitrator, therefore, considered the overall situation has dealt with the valuation of the properties and observed that the share of a group is of Rs. 43.55 crs. principally. These aspects are also not disputed by the parties.

43. Admittedly, whole immovable properties are not available physically for exact distribution and or partition. The parties as recorded, submitted to retain their long and respective physical possession of the immovable properties. However, for equal, proper and thorough distribution, it is necessary and as rightly observed by the learned Arbitrator, to vacate the portion of the properties so that the equal distribution of the properties can be made as recorded and directed the parties accordingly to proceed further.

44. The submission with regard to the valuation of the property in the present facts and circumstances, is unacceptable, as admittedly the valuer was appointed by the consent of the parties and before preparing the report the valuer had taken note of the rival submissions of the parties, as agreed. It is final and binding. And once the valuer report is filed, I see that there is no reason now, to allow the petitioners to reopen the issue of cross examination, as to the valuation of the property, again in the present Petition. The issue was concluded. It has been decided rightly by the Arbitrator in view of agreement dated 20/03/2007.

45. Once the report is placed on record and the Arbitrator has accordingly distributed the property, I am not inclined to accept the submission that no full opportunity was given to the parties as contemplated u/s 26 of the Act, merely because one of the party wants to cross examine the said valuer again, contrary to the agreed terms. The point is that full opportunity was given to the parties before submitting the valuation report. In the present case, the valuer being an expert and as the Arbitrator had appointed the valuer by the consent of the parties and as the parties participated and submitted their say before the valuer, thus considering this background, I am not inclined to interfere either with the valuer's report or the reasonings so given by the learned Arbitrator on this count.

46. The submission with regard to stamping, can be agitated u/s 47 of the C.P.C., if any. That is also no ground to set aside the award M. Anasuya Devi and Another Vs. M. Manik Reddy and Others,

47. The submission is also made that one of the property i.e. at Kamla Retreat, Kanpur, has now been declared as "Forest Like Area" by the Uttar Pradesh Government under the Forest (Conservation) Act, 1980 the fact remains that, it was not the position when the award was passed. The subsequent litigation or declaration, even if so made, that itself can not be the reason to interfere with the award or otherwise well within the framework of law and the record. On this ground itself, the award cannot be said to be bad or illegal.

48. The reasoning with regard to the distribution/ direction to vacate the respective portion for proper allotment/ distribution in given facts, is necessary. The parties, the one who actually, are enjoying the possession, but when it comes to the distribution of the property, insist to retain the respective shares, which in view of the agreement, is just not possible. In a family arrangement like this, when the parties though agreed for proper distribution, yet raise and as rightly observed by the Hon"ble Supreme Court, technical objections, just to delay the proceedings, need to be considered as one of the facet against such parties, while passing the order of distribution/ partition of the properties in such situation. It is difficult for the Arbitrator to pass an order of exact distribution of the immovable properties, specially when the parties themselves are not ready to vacate the respective premises and or ready to make available whole properties for proper distribution. The learned Arbitrator in fact, as recorded and after considering the rival submissions and respective claims to retain the properties, which are in the occupation since long, passed the order which, in my view, is to do justice to all the parties and is just and fair. It is difficult for the Arbitrator or such other person to pass and or distribute the properties exactly with metes and bounds and therefore, some error of margin, even if any, that itself, in my view, is no ground to interfere with the well reasoned order.

49. The Apex Court even in a Trade Marks matter, has given importance to the family arrangement/ settlement between the parties with observation that "the Court would not easily disturb them", Ramdev Food Products Pvt. Ltd. Vs. Arvindbhai Rambhai Patel and Others, , even by referring to the Judgment of the Supreme Court between the parties (Hari Shankar Singhania (supra)).

50. I have also recognized the importance of family arrangement and the related agreements and action based upon the same in 2007 (Supp.) Bom.C.R. 925, Reliance Natural Resources Ltd. v. Reliance Industries Limited. In the present case also the parties are at liberty to settle the matter to enjoy and utilize the fruit of this judicious decision.

51. The relation between the parties, their respective love, affection and attachment and in the situation like this, when some parties are willing and some parties are opposing the same and even challenging the valuation of the property, when other parties are ready to give up their claims, the role of Arbitrator is commendable and needs to be respected in all respect by the parties to end the dispute.

52. Even otherwise, considering the scope and purpose of Section 34 and I have already observed in *Jigar Vikamsey v. Bombay Stock Exchange Limited* (Arbitration Petition No. 66 of 2009), dated 28th August, 2009, as under:

11 The Petition is u/s 34 of the Act. The Apex Court recently in *G. Ramachandra Reddy and Co. Vs. Union of India (UOI) and Another*, and in *M.P. Housing Board Vs. Progressive Writers and Publishers*, , while dealing with both the Arbitration Acts and considering the principles to challenge the Arbitral Award has reiterated the following points:

(a) The reappraisal of the evidence by the Court is not permissible (*M/s. Ispat Engineering and Foundry Works, B.S. City, Bokaro Vs. M/s. steel Authority of India Ltd., B.S. City, Bokaro*,). An Award of an Arbitrator need to be read as a whole to find out the implication and meaning thereof of the reasons. The Court, however, does not sit in Appeal over the Award.

(b) The interference, where reasons are given would still be less, unless there exists a total perversity and/or the Award is based on a wrong proposition of law.

(c) Even if two views are possible on an interpretation of central clause, that would not be justification in interfering with the Award specially when the view so taken is possible/plausible one (*State of U.P. Vs. Allied Constructions*,). [*G. Ramchandran (Supra)*] But the interpretation of the clause which is wholly contrary to law should not be upheld by the Court. [*Numaligarh Refinery Ltd. Vs. Daelim Industrial Company Ltd.*,]

(d) The jurisdiction of the Court to interfere with an Award made by an Arbitrator is limited, unless there is an error apparent on the face of the Award and/or jurisdictional error and/or legal misconduct. [*Numaligarh Refinery Ltd (supra)*].

(e) The wrong point of law and apparent, improper and incorrect findings of facts which are demons ratable on the face of the material on record, may be treated as grave error and/or legal misconduct.

(g) "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 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 u/s 34(2) of the Act.

(b) The 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.

[Delhi Development Authority Vs. R.S. Sharma and Co., New Delhi,].

In view of above settled principles of law, the judgments cited by the parties in support of their respective submission on law need no further discussion. The facts are totally distinct and distinguishable."

53. The Apex Court in M.P. Housing Board Vs. Progressive Writers and Publishers, , has also recorded while dealing with Section 34 of the Act, that it is not, all the time that the Court must see each and every detailed reason, the requirement is to consider in totality the reasoning so given based upon the material available on record. This is not an Appellate Court. There is no scope for expressing any other possible views/ opinion. Even after reexamination of the material on the record, as per respective and rival contentions, I am declined to take any contra view of the recommendations and the well considered arbitrament. It deserves to be maintained in all respect as the present Judicial verdict is not perverse and or illegal.

54. Therefore taking note of all in totality, both the Petitions are dismissed. No order as to costs.

55. The request to expedite the copy is granted.