

(2011) 04 GUJ CK 0111
In the Gujarat High Court
Case No : First Appeal No. 1300 of 1999

Gautam Sarabhai

APPELLANT

Vs

Navinbhai R. Thakker and Another

RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 10, 2, 34

Citation : (2011) 04 GUJ CK 0111

Hon'ble Judges : J.C. Upadhyaya, J

Bench : Single Bench

Advocate : Dipak R. Dave, for the Appellant; Party-in-Person for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Upadhyaya, J.—The challenge in this appeal is to the judgment and order dated 22/2/1999 passed by the Ld. Judge, Court No. 16, City Civil Court, Ahmedabad (for short "City Court") in Civil Misc. Application No. 109/1998, whereby the aforesaid application preferred by the Appellant herein came to be dismissed by the City Court and consequently the award dated 29/11/1997 rendered by two Ld. Arbitrators, namely Mr. MM Sheth and Mr. HK Trivedi came to be confirmed and upheld by the City Court.

2. The Respondent No. 1 was registered broker of Respondent No. 2 - Ahmedabad Stock Exchange and the Appellant happened to be sub-broker of the Respondent No. 1. Between them, a dispute occurred regarding payment of certain dues and as per bye-law No. 248 of the Stock Exchange Ahmedabad Rules, Bye-laws and Regulations, 1957 (for short "the said Rules and Regulations"), the dispute between a member and a non-member was required to be referred to arbitration. The Arbitrators in their award dated 29/11/1997 directed the Appellant herein to pay to the Respondent No. 1 Rs. 3,50,193-50 ps., with running interest @ 10% p.a., till the realization of the amount by the Respondent No. 1. Feeling aggrieved and dissatisfied with the award passed by

the Arbitrators, the Appellant herein filed Civil Misc. Application No. 109/1998 before the City Court u/s 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act"). The City Court, after considering the submissions advanced on behalf of both the sides and perusing relevant material, dismissed said application and confirmed and upheld the award passed by the Arbitrators. This has given rise to this appeal.

3. Mr. DR Dave, Ld. Advocate for the Appellant, at the outset, challenged the very appointment of the Arbitrators in the arbitral proceedings. It is submitted that the Respondent No. 1 appointed Mr. MM Sheth as his Arbitrator, the Appellant did not appoint any Arbitrator, but the Stock Exchange appears to have appointed Mr. HK Trivedi as Arbitrator of the Appellant pursuant to certain rules and bye-laws. It is, therefore, submitted that at any rate, Mr. HK Trivedi was not appointed as his Arbitrator by the Appellant. It is further submitted that as per bye-law No. 254 of the Rules and Regulations, the Arbitrators were required to pass their award within 4 months after entering on the reference or after having been called upon to act by notice in writing from any party. It is submitted that in the instant case, the said time slot of 4 months has not been adhered to by the Arbitrators and the award was delivered beyond said period of 4 months. Mr. Dave submitted that there is the provision in the Rules and Regulations of the Stock Exchange about extension of time of said 4 months and the said period can be extended with the consent of the parties. It is submitted that in the instant case, the City Court observed that certain letters written by the Appellant to the Arbitrators requesting early decision in the arbitral proceedings amounts to consent on the part of the Appellant for extension of said period of 4 months. It is submitted that in the instant case, mere addressing letters by one party to the Arbitrators cannot be construed as consent of the parties for extension of the period. Mr. Dave, Ld. Advocate for the Appellant submitted that in the instant case the award was delivered by two Arbitrators and considering the provision contained u/s 10 of the Act, there cannot be even number of Arbitrators and thus, the arbitral proceedings is hit by the provision contained in Section 10 of the Act.

3.1. Mr. Dave, Ld. Advocate for the Appellant submitted that the Respondent No. 1 had filed his claim statement before the Arbitrators on 29/10/1996, whereby he claimed Rs. 2,30,187-85 ps., from the Appellant pursuant to one bill bearing No. AC/9543/8 dated 8/3/1996. It is, therefore, submitted that demand was regarding specific amount being Rs. 2,30,187-85 ps., but the Arbitrators awarded Rs. 3,50,193-50 ps., which was, thus, beyond the terms of reference. That thus, the Arbitrators exceeded the terms of reference by awarding more amount than what was claimed by the Respondent No. 1.

3.2. Mr. Dave, Ld. Advocate for the Appellant submitted that in the instant proceedings, the Respondent No. 1 made the reference to the Arbitrators on 29/10/1996; whereas much prior to said date, on 8/10/1996 it was the Appellant who applied to the Respondent No. 2 - Stock Exchange ventilating his grievance

that 1500 shares which he had deposited in capacity as sub-broker before the Respondent No. 1 have not been returned back to him. In it, it was further claimed that Rs. 1,50,000/- as well as Rs. 7,00,000/- pertaining to share transactions of Shri Rang Fincap Company were found due from the Respondent No. 1. It is submitted that though the Appellant raised dispute on 8/10/1996 before the Respondent No. 2 - Stock Exchange, first in point of time, yet the application made by the Respondent No. 1 dated 29/10/1996 was considered by the Stock Exchange as the reference and no Arbitrator came to be appointed pursuant to the application of the Appellant dated 8/10/1996.

3.3. Mr. Dave, Ld. Advocate for the Appellant submitted that thus the discriminatory treatment was adopted by the Stock Exchange qua the Appellant. It is further submitted that even before the Arbitrators, the Appellant presented extracts of his books of accounts and copies of relevant bills as well as requested the Arbitrators by presenting one Prabhudas Patel to be examined as witness of the Appellant, but neither Prabhudas Patel, who was offered as witness of the Appellant, came to be examined by the Arbitrators nor the documents presented by the Appellant came to be considered by the Arbitrators. It is submitted that on the other hand, whatever extracts of books of accounts and the documents presented by the Respondent No. 1 have been considered as conclusive evidence by the Arbitrators and passed the award which was exceeding the claim even made by the Respondent No. 1. It is, therefore, submitted that since the Appellant was not member of the Stock Exchange and Respondent No. 1 was the member, the Arbitrators misconducted themselves as well as the arbitral proceedings.

3.4. It is further submitted by Mr. Dave that the Respondent No. 1 presented different extracts of his books of accounts by showing false excuses before the Arbitrators about Kachcha account and Pakka account. Thus, even the Respondent No. 1 was not certain about the books of accounts maintained by him and the Arbitrators should not have relied upon mere entries in such books of accounts while directing the Appellant to pay such huge amount with interest to the Respondent No. 1. Even the document showing receipt of 1500 shares by the Respondent No. 1 from the Appellant dated 20/5/1995 was produced before the Arbitrators and the Respondent No. 1 orally contended that he had returned those shares to the Appellant and the Arbitrators believed such oral statement of the Respondent No. 1 by holding that the Appellant failed to prove that the Respondent No. 1 did not return those 1500 shares to him. That thus, according to the Arbitrators, the Appellant was required to produce negative proof, which is quite contrary to the provisions laid down in the Evidence Act.

3.5. Mr. Dave, Ld. Advocate for the Appellant, during the course of his arguments, took this Court through certain entries allegedly posted by the Respondent No. 1 in his books of accounts and submitted that the Arbitrators erred in relying upon either false or incomplete entries. It is submitted that the Arbitrators appear to have been misled by the Respondent No. 1 by stating that

as against his alleged due of about Rs. 21 lac, the Appellant paid about Rs. 19 lac and without going deep into such transaction, the Arbitrators came to the conclusion that nothing was found due from the Respondent No. 1 to the Appellant, but on the contrary, the Appellant was required to make payment to the Respondent No. 1.

3.6. Mr. Dave further submitted that when the Appellant claimed his dues from the Respondent No. 1 about transaction of shares of Shri Rang Fincap Co., the Arbitrators brushed aside his claim by saying that since it was the transaction of shares before the listing (premium transaction) and, therefore, as per the guideline of Respondent No. 2 - Stock Exchange, such dispute cannot be settled by the Arbitrators, but when Respondent No. 1 claimed his dues allegedly arising out of the share transaction of Shri Rang Fincap Co., the Arbitrators held that Respondent No. 1 was entitled to recover the payment from the Appellant. Thus, it is submitted that award is not only illegal but it is unfair, unreasonable and contrary to justice and morality.

3.7. Mr. Dave, Ld. Advocate for the Appellant submitted that there cannot be any doubt that the proceedings u/s 34 of the Act before the Court is not an appeal over the award passed by the Arbitrators, but it is submitted that considering the provisions contained in Section 34 of the Act, so also relying upon the case of Delhi Development Authority Vs. R.S. Sharma and Co., New Delhi, and more particularly referring para. 12 in said judgment, it was submitted that when the award is contrary to substantive provisions of law and when it is patently illegal and is contrary to justice or morality and if it is so unfair and unreasonable that it shocks the conscience of the Court and when it is against the specific terms of the reference, then such award deserves to be set aside. It is, therefore, submitted that though the application u/s 34 of the Act before the Court is not an appeal over the award, but while deciding as to whether the award deserves to be confirmed or deserves to be set aside in light of the above referred factors and parameters, the City Court was bound to examine the award in terms of the evidence produced before the Arbitrators. It is submitted that in the instant case, though material contentions were raised on behalf of the Appellant before the City Court, yet the City Court did not deal with such contentions only by replying that the City Court cannot sit in appeal over the award of the Arbitrators.

3.8. Mr. Dave, Ld. Advocate for the Appellant relied upon certain decisions of the Hon"ble Apex Court, which shall be discussed in this judgment at appropriate time. Ultimately, it is submitted that the appeal may be allowed and the impugned judgment and order rendered by the City Court be set aside and the award of the Arbitrators be also set aside.

4. Per contra, the Respondent No. 1 - party-in-person fully supported the impugned judgment rendered by the City Court and submitted that the City Court rightly confirmed the award passed by the two Arbitrators. Regarding the submission on behalf of the Appellant that pursuant to Section 10 of the Act, there should not be even number of Arbitrators and further regarding the

submission of the Appellant that the Arbitrators in the instant case were required to deliver award within 4 months and that there was no consent of both the parties for extension of time, Respondent No. 1 relied upon a case of The Stock Exchange, Mumbai Vs. Vinay Bubna and others, Relying upon this decision rendered by a Division Bench of the Bombay High Court, it was submitted that so far as the Stock Exchange, Mumbai is concerned, almost identical rules and regulations and bye-laws are framed which are framed by the Respondent No. 2 - Ahmedabad Stock Exchange. In the aforesaid decision, Bombay High Court, relying upon Section 2(4) of the Act and bye-law No. 249(a) of the Rules and Regulations framed by Mumbai Stock Exchange, upheld the award delivered by two Arbitrators. In the said decision, relying upon one earlier decision rendered in Hemendra Shah v. Stock Exchange, Bombay reported in 1995 (2) MLJ 770 and considering the relevant bye-laws, observed that the ground that the award was not pronounced within 4 months, shall not be sufficient to set aside the entire award.

4.1. On merits, Respondent No. 1 argued that in the award, the Arbitrators not only considered the claim of the Respondent No. 1, but also the claim of the Appellant. It is, therefore, submitted that the Arbitrators, as a matter of fact, adjudicated the claims of both the parties. Respondent No. 1 read over the award delivered by the Arbitrators and submitted that the Arbitrators, examining all the relevant materials produced by both the sides, came to the conclusion that the awarded amount was found due from the Appellant to the Respondent No. 1. It is further submitted that the Arbitrators did not adopt any discriminatory treatment qua the Appellant. In the award, the Arbitrators assigned cogent and convincing reasons while arriving at the conclusion. The Arbitrators have also considered the admitted fact that as against the dues of about Rs. 21 lac, the Appellant by issuing cheque on 14/3/1996, paid Rs. 19 lac to the Respondent No. 1 and the Arbitrators, therefore, rightly observed that if at all the amount to the tune of about Rs. 7 lac was found due by the Appellant from the Respondent No. 1, the Appellant would not have made part payment of Rs. 19 lac. The Respondent No. 1 during the course of his submissions referred the relevant papers from Civil Misc. Application No. 109/1998 of the City Court and drawing my attention to the relevant correspondence made by the Arbitrators to both the parties, namely communications dated 10/4/1997 (page 92), 24/4/1997 (page 93), 30/5/1997 (page 175), 2/9/1997 (page 220) and 23/9/1997 (page 225), submitted that by virtue of these communications, both the parties were directed by the Arbitrators to produce relevant documents. So far as Respondent No. 1 is concerned, he produced all the required documents over and above his books of accounts before the Arbitrators. As against that, so far as the Appellant is concerned, he only produced certain extracts of books of accounts, which were not found by the Arbitrators in proper order and, therefore, the Arbitrators directed the Appellant to produce other relevant documents including his bank statement, but not only the Appellant did not comply with the direction, but so far as the production of bank statement is concerned, outrightly refused to produce the same.

4.2. The Respondent No. 1 further submitted that there is nothing that the Arbitrators, by passing award to the tune of Rs. 3,50,193-50 ps., exceeded the terms of reference. The bare perusal of the award would suggest that the dispute raised by both the parties was pertaining to the settlement of account. The Respondent No. 1 in his reply dated 23/5/1997 (page 119) explained how Rs. 3,50,193-50 ps., were found due from the Appellant. It is submitted that the price of share of Shri Rang Fincap was though Rs. 75/- per share, Rs. 110/- per share were paid and, therefore, at the difference amount of Rs. 35/- per share, Rs. 1,33,020-65 ps., were found due from the Appellant and adding said amount to Rs. 2,30,187-85 ps., the net amount comes to Rs. 3,63,208-50 ps. However, the Arbitrators, examining the books of accounts, came to the conclusion that the Respondent No. 1 failed to prove that Rs. 13,015/- were found due by the Respondent No. 1 from the Appellant and deducting said amount, the Arbitrators rightly passed award of Rs. 3,50,193-50 ps. It is further submitted that there was no any entry in the books of accounts of the Respondent No. 1 in the name of Prabhudas Patel and he had no transaction whatsoever with him and, therefore, the Arbitrators rightly not examined Prabhudas Patel. It is submitted that the Appellant relied upon one handwritten extract of books of accounts dated 12/3/1996 (page 22) stating that the said was the account of Prabhudas Patel, but in fact said document itself reveals that the same was in the name of Nilesh Patel. About delivery of 1500 shares, it is submitted that the Arbitrators have taken just and right decision. The Arbitrators examined claims of both the parties and, therefore, it cannot be said that the Arbitrators compelled the Appellant to adduce negative evidence.

4.3. The Respondent No. 1, in support of his submissions, relied upon certain decisions of Hon"ble the Apex Court, which shall be discussed in this judgment at appropriate time. Ultimately, it is submitted that the appeal may be dismissed.

5. None appeared for Respondent No. 2 - Ahmedabad Stock Exchange.

6. I have examined the record and proceedings in the context with the submissions made by the rival sides.

7. Before the submissions made on behalf of the parties are examined on merits, it is necessary to consider the case of Delhi Development Authority v. R.S. Sharma & Co. (supra), decided by Hon"ble the Apex Court. In this decision, Hon"ble the Apex Court, examining earlier decisions, laid down guidelines as to under what circumstances, award passed by the Arbitrator can be set aside. In para. 12 in the decision, Hon"ble the Apex Court observed as under:

12. 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 u/s 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.

8. Relying upon said decision, Mr. Dave, Ld. Advocate for the Appellant stated that in the instant case, the award passed by the Arbitrators is contrary to substantive provisions of law, contrary to provisions of the Act, patently illegal, contrary to justice or morality, so unfair and unreasonable that it shocks conscience of the Court and is against the specific terms of the reference.

9. Mr. Dave, Ld. Advocate submitted that the award passed by the two Arbitrators is violative of the provisions contained u/s 10 of the Act. Section 10 pertains to number of Arbitrators and it is stated that the parties are free to determine the number of Arbitrators, provided, that shall not be even number. Therefore, it is submitted that the award passed by two Arbitrators is contrary to the Act. Now in this connection, considering the case of Stock Exchange, Mumbai v. Vinay Bubna (supra), almost identical question came up before the Division Bench of the Bombay High Court. Considering the said decision and especially considering the relevant provisions of the Rules, Bye-laws and Regulations framed by Mumbai Stock Exchange, as emerged from said decision and considering the relevant provisions of the Stock Exchange Ahmedabad Rules, Bye-laws and Regulations, 1957, it clearly transpires that the Rules, Bye-laws and the Regulations are almost identical and similar. The Division Bench of the Bombay High Court considered Sub-section (4) of Section 2 of the Act together with Section 10 of the Act and Bye-law 249 (a) pertaining to appointment of Arbitrators and it was observed that as per the said Bye-law, all claims, differences and disputes required to be referred to arbitration, shall be referred to the arbitration of two members of the exchange i.e. even number of Arbitrators. Referring Section 2(4) of the Act, in para. 14 of the decision, Bombay High Court observed that once it is found that arbitration is under the Regulation Act, Bye-laws framed under the Regulation Act will prevail and not Section 10 of the Act. Under such circumstances, in the instant case, the Arbitrators have been appointed pursuant to the Rules and Bye-laws framed by the Stock Exchange and simply because the award came to be passed by two Arbitrators, it cannot be said that it deserves to be set aside.

10. Mr. Dave, Ld. Advocate further submitted that in the instant case, the reference was made on 29/10/1996. The first meeting by the Arbitrators was held on 10/4/1997 and the last meeting was held on 30/5/1997 and the award was pronounced on 29/11/1997. My attention was drawn to Bye-law 254 wherein it is provided that the Arbitrators shall make their award within four months after

entering on the reference. It is submitted that in the instant case, thus, the award was pronounced after the period of four months was already over. It is further submitted that as per Bye-law 254, such period of four months can be extended only by the consent of the parties to the reference. My attention was also drawn to Bye-law No. 261 wherein it is provided that Governing Board or the President may, if deemed fit, extend from time to time period for making award, not exceeding one month at a time. My attention was also drawn to Regulation 15.13, wherein it is provided that the Arbitrators or Umpire may from time to time apply in Form No. 11 to the Governing Board or the President for extension of time for making award. Referring these provisions, Mr. Dave, Ld. Advocate submitted that in the instant case, not only the award came to be pronounced beyond the period of four months, but neither the parties consented for extension of time nor the Arbitrators applied for extension of time nor the Governing Board or the President of the Stock Exchange extended the time. Therefore, it is submitted that the award deserves to be set aside. In this respect, again considering the case of *Stock Exchange, Mumbai v. Vinay Bubna* (supra), almost identical situation came to be dealt with by the Division Bench of the Bombay High Court. The Division Bench of the Bombay High Court referred earlier case of *Hemendra Shah v. Stock Exchange, Bombay*, wherein identical contention was raised that the arbitration proceedings in that case had become time barred since the statutory period was over. Bye-laws 254 and 261 framed by the Bombay Stock Exchange, which are almost *pari-materia* to the Bye-laws 254 and 261 of Ahmedabad Stock Exchange, came to be discussed in para. 19 in said decision. Bombay High Court observed that under Bye-law 261, the Governing Board can extend time from time to time. It was further observed that even though the period may have expired and even if time has not yet been extended, the Governing Board or the President will extend the time to make the award. On the aspect of consent of the parties to extend the time, in para. 21 in the decision, referring the provisions contained in Bye-laws 254 and 261, it was observed that for extending the time by Governing Board or the President, such consent of the parties was not condition precedent. Earlier case of *Kishor Jitendra Dalal Vs. Jaydeep Investment and another*, came to be referred wherein a contention was raised that the arbitral proceedings had become null and void since the time for Arbitrator to make the award had expired and the Petitioner therein had declined to give his consent for enlargement of time. It was further contended that the Arbitrators had become *functus officio*. In the above backdrop, referring Bye-law 251, it was observed that the consent of parties was not condition precedent for the Governing Board or the President to enlarge the time. In the above background, it was observed that the Governing Board or the President has power to enlarge the time and if the time to make the award is not yet enlarged by the Governing Board or the President under Bye-law 254 read with Bye-law 261, the Governing Board or the President of the Exchange can still enlarge the time for the Arbitrators.

11. In the above background, in this case, the award cannot be said to be null

and void. Even otherwise, in the instant case, it emerges that after the last meeting with the Arbitrators was over on 30/5/1997 and the award was delivered on 29/11/1997, between these two dates, it was the Appellant who wrote two letters to the Arbitrators dated 8/9/1997 (page 222) and dated 27/9/1997 (page 227) requesting the Arbitrators to deliver award. It is, therefore, submitted by the Respondent No. 1 party-in-person that the Appellant himself requested the Arbitrators after the period of four months was over to deliver award and, therefore, now the Appellant cannot take the different stand and allege that the award is time barred. Considering the submission so also the above referred two letters, it clearly transpires that the Appellant now cannot take disadvantage of the situation that both the parties did not consent for extension of time. It is clear that after the period was over, it was the Appellant, who wrote two letters requesting the Arbitrators to deliver the award. There is nothing that the Respondent No. 1 either expressly or impliedly took any objection in extension of time. Bye-law 254 provides that the extension may be with the consent of the parties, but it is no-where stated that both the parties should give such consent in writing. However, so far as the Appellant is concerned, by addressing above referred two letters to the Arbitrators, in a way, impliedly he consented for extension. There is nothing that the Respondent No. 1 in writing or orally objected to such extension. The City Court in the impugned judgment and order dealt with this contention and rightly observed that virtually the extension of time in the above situation can be said to be as per Bye-law 254. Under such circumstances, the award cannot be said to be time barred.

12. A contention was raised on behalf of the Appellant that second Arbitrator, namely Mr. HK Trivedi was not appointed by the Appellant. In the impugned judgment and order, the City Court dealt with the above contention. It is true that Mr. Trivedi was not appointed as Arbitrator by the Appellant. The Respondent No. 1 had appointed as his Arbitrator Mr. MM Sheth, but despite the request made by the Stock Exchange on 30/10/1996, the Appellant did not appoint his Arbitrator and, therefore, the Stock Exchange by letters dated 19/11/1996, 6/12/1996 and 8/1/1997 sent reminders to the Appellant to appoint his Arbitrator. Despite this, the Appellant did not appoint his Arbitrator. Lastly, the Stock Exchange by the letter dated 1/3/1997 called upon the Appellant to appoint his Arbitrator within 10 days of the receipt of said letter, failing which the Stock Exchange would be compelled to appoint Arbitrator on his behalf. Despite this, the Appellant did not appoint Arbitrator. Thereafter, relying upon Regulation 15.6 and Regulation 15.10, the Stock Exchange appointed Mr. HK Trivedi as Arbitrator of the Appellant on 19/3/1997. By virtue of the Regulation, in case of failure, neglect or refusal on the part of the other party to appoint the Arbitrator, the Governing Board or the President shall appoint an Arbitrator. Thus, the appointment cannot be said to be illegal. Moreover, after Mr. Trivedi was appointed as Arbitrator of the Appellant, the Appellant appeared in the arbitral proceedings and took part in the proceedings. There is nothing that during the arbitral proceedings, the Appellant ever raised any objection about the

appointment. Under such circumstances, the grievance ventilated by the Appellant that his Arbitrator was not appointed and, therefore, the award is null and void, has no substance.

13. There is no dispute that the Court, while exercising powers u/s 34 of the Act, does not sit in appeal over the arbitration award and examine the correctness of the award on merits. Thus, the jurisdiction of the Court is very limited. However, both the sides, in great detail, made their submissions, against the award by the Appellant and in favour of the award of Respondent No. 1, not only before the City Court but even before this Court and requested for threadbare examination of each and every evidence adduced by the parties before the Arbitrators, so also the correctness, validity and propriety of the relevant entries made in the books of accounts maintained by both the parties. However, Mr. Dave, Ld. Advocate for the Appellant fairly submitted that there cannot be any doubt that the powers u/s 34 of the Act is very limited and the Civil Court does not sit in appeal over the award, but the detailed examination of the evidence adduced before the Arbitrators would reveal that the mode and method of appreciation of evidence adopted by the Arbitrators is contrary to the provisions of law i.e. Indian Evidence Act and the award is, therefore, patently illegal, contrary to justice or morality and unfair and unreasonable. Mr. Dave, Ld. Advocate, therefore, submitted that the minute examination of the record presented before the Arbitrators and the mode and method in which the evidence was appreciated by the Arbitrators is relevant in the above context.

14. In the above view of the matter and with a view to know whether the award deserved to be set aside looking to Section 34 of the Act or not, if the award is considered, it clearly transpires that the Arbitrators not only examined the claim of the Respondent No. 1, but also of the Appellant. A grievance was ventilated on behalf of the Appellant that despite the fact that he forwarded his letter on 8/10/1996 to the Stock Exchange demanding return of 1500 shares from the Respondent No. 1, which he had deposited as sub-broker and claimed Rs. 7 lacs from the Respondent No. 1, the letter subsequently sent by the Respondent No. 1 dated 29/10/1996 came to be treated as reference and his claim statement. It was, therefore, submitted that since the Respondent No. 1 was member of the Stock Exchange, the discriminatory treatment was given to the Appellant. In this context, if the award is considered, as stated above, the Arbitrators took into consideration even the claim made by the Appellant. Thus, virtually perusing the award, it does not transpire that the Arbitrators considered the claim made by the Appellant as counter claim, counter to the claim of the Respondent No. 1, but virtually adjudicated claims of both the parties. About the fact as to whether 1500 shares were returned by the Respondent No. 1 to the Appellant or not, the Arbitrators by assigning reasons and relying upon certain admissions made by the Appellant in Criminal Case, observed that despite the fact that the Appellant was on and often requested to produce evidence to show that those 1500 shares which came to be deposited by the Appellant before the Respondent No. 1 and the 1500 shares which were deposited with Dena Bank as co-lateral security,

were different shares and for that purpose even the Arbitrators requested the Appellant to produce bank statement, etc., but the Appellant failed to comply with such direction. On behalf of the Appellant, it was submitted that the Arbitrators insisted that the Appellant should furnish negative proof that he should prove that he has not received back 1500 shares. As a matter of fact, if the award is considered in its true perspective, the Arbitrators virtually adjudicated the claims of both the parties and, therefore, it cannot be said that the Arbitrators acted in violation of the provisions of the Evidence Act. Even the evidence which the Appellant was required to be produced, was not produced by him before the Arbitrators.

15. Considering para. 4 in the award, it transpires that the Arbitrators took into consideration the claim made by the Appellant of different amounts on different dates from the Respondent No. 1. The Arbitrators took into consideration the evidence produced by the Respondent No. 1 regarding his claim and regarding the claim made by the Appellant in form of books of accounts, bills, bank statement and other relevant evidence. It is further pertinent to note that the Arbitrators during the arbitral proceedings, vide communications dated 10/4/1997 (page 92), 24/4/1997 (page 93), 30/5/1997 (page 175), 2/9/1997 (page 220) and 23/9/1997 (page 225) requested both the sides to produce relevant evidence and documents including the bank evidence. It is pertinent to note that pursuant to such communications, the Appellant produced the extract of his books of accounts, but the Appellant, vide letter dated 25/5/1997 addressed to the Arbitrators by him, refused to furnish bank evidence by saying that according to him such evidence was not relevant. In the award, the Arbitrators dealt with this aspect of the matter. The Arbitrators further took into consideration one admitted fact that as against the Bill AC/9543/8 issued by the Respondent No. 1 to the Appellant of Rs. 20,61,045/-, the Appellant made part payment by cheque of Rs. 19 lacs to the Respondent No. 1. In this context, if the relevant entries in the books of accounts produced by the Respondent No. 1 before the Arbitrators are considered, it transpires that cheque of Rs. 19 lacs was issued by the Appellant to the Respondent No. 1 on 14/3/1996. The Arbitrators, therefore, were right in observing that since the payment of Rs. 19 lacs was made by the Appellant to the Respondent No. 1, he would not have made such payment if anything was found due from the Respondent No. 1 to the Appellant. In para. 5 in the award, the Arbitrators had to note that despite the fact that the Appellant remained present before the Arbitrators throughout the proceedings and despite several attempts made by the Arbitrators, the Appellant failed to produce bank statement, distinctive numbers of the shares, books of accounts, etc. In para 6, the Arbitrators noted the evidence produced by the Respondent No. 1.

16. A grievance was ventilated that so far as the transaction regarding shares of Shri Rang Fincap Company is concerned, when the Respondent No. 1 made his claim to the Appellant, his claim was sanctioned; whereas for the same transaction, when the Appellant claimed amount from the Respondent No. 1, the

Arbitrators in the award replied that since the same was premium transaction as the transaction was made before the listing of the shares and, therefore, as per the norms of Stock Exchange, the Stock Exchange was not responsible to settle dispute regarding such transaction. In this respect, it is pertinent to note that perusing the relevant record produced before the City Court from the arbitral proceedings, it clearly transpires that the transaction regarding the shares of Shri Rang Fincap was undertaken solely by the Appellant. It further transpires that by way of claim, what the Appellant claimed was the amount regarding the loss sustained by him in the transaction. It is pertinent to note that the Appellant in connection with this, has filed a separate Civil Suit bearing Summary Suit No. 2457/1998, wherein he claimed Rs. 21,77,167/- against the Respondent No. 1 and both the sides stated that said suit is still pending. However, considering the facts and circumstances of the case and in light of the above discussion, it cannot be said that the Arbitrators adopted discriminatory treatment and passed the award.

17. On behalf of the Appellant, a grievance is ventilated that in the claim statement, the Respondent No. 1, claimed Rs. 2,30,187-85 from the Appellant, but the Arbitrators passed award to the tune of Rs. 3,50,193-50 and thus the Arbitrators exceeded the terms of agreement and awarded the claim which is more than the amount demanded by the Respondent No. 1. However, at the outset, in the instant case, the grievance is that more amount is awarded than what was claimed by the Respondent No. 1. This itself may not be sufficient to set aside the whole award and if the Court comes to the conclusion that by awarding more amount than what was claimed, the Arbitrators have committed mistake, in that case the award can be confined to the extent of what was initially claimed. However, in the instant case, as stated above, in the award the Arbitrators took into consideration not only the claim made by the Respondent No. 1, but even the claim made by the Appellant. If the statement of the Respondent No. 1 dated 23/5/1997 (page 119) is considered, in it, explanation is forthcoming as to how, in fact Rs. 3,63,208-50 were found due. In said statement dated 23/5/1997, it has been categorically explained that as a matter of fact, price of the share of Shri Rang Fincap was Rs. 75/-, but in the transaction it was considered to be Rs. 110/- and thus per share the difference of Rs. 35/- occurred and, therefore, adding Rs. 1,35,020-65 ps., in Rs. 2,30,187-83, the total would come to Rs. 3,63,208-50 ps. Still, the Arbitrators did not award said amount, but observed that the Respondent No. 1 failed to prove that Rs. 13,015/- were found due by the Respondent No. 1 from the Appellant and, therefore, deducting said amount, the Arbitrators passed award of Rs. 3,50,193-50 ps. Ample opportunity was afforded to the Appellant to meet with the claim made by the Respondent No. 1. Thus, no prejudice can be said to have been caused to the Appellant.

18. Mr. Dave, Ld. Advocate for the Appellant relied upon a decision rendered in the case of J.C. Budhreja Vs. Chairman, Orissa Mining Corporation Ltd. and Another, In said decision, Arbitrator awarded the amount in excess of the claim

and Hon"ble the Apex Court held that this amounts to legal misconduct. However, considering para. 22 in said decision, it appears that the additional amount than what was claimed came to be awarded by the Arbitrator and said additional amount was pursuant to the amount involved in other contracts not even referred to the Arbitrator. In the instant case, the facts are otherwise. Perusing the award in the instant case, the Arbitrators were called upon to settle the account between two parties. Considering the decision rendered in the case of BOC India Ltd. Vs. Bhagwati Oxygen Ltd., relied upon by the Respondent No. 1, one of the grounds under which the award of the Arbitrator was assailed was that the Arbitrator had gone beyond his jurisdiction in awarding more amount than what was claimed. Examining this aspect of the matter and considering earlier decisions and more particularly paras. 23 and 27 in the decision, Hon"ble the Apex Court examined the factual matrix of the case and observed that this cannot be said to be an award which is contrary to the contract entered into by the parties. It was further observed that the Arbitrator had duly considered the statement of claim and the terms and conditions of the contract and the material documents produced by the parties, which were available on record and came to a conclusion rightly in favour of the Respondent. It was, therefore, observed that when the Arbitrator had taken plausible view and interpretation of contract, it is not open to the Court to set aside the award on the ground that the Arbitrator had misconducted himself in the proceedings. As stated above, in the instant case, during the arbitral proceedings itself, the Respondent No. 1 furnished clear and cogent explanation before the Arbitrators by his statement dated 23/5/1997 (page 119). The Appellant, therefore, had reasonable opportunity to meet with it. However, as stated above, the Arbitrators requested in writing to both the parties including the Appellant to furnish required evidence before the Arbitrators, but ultimately, in the award itself, in para. 5, the Arbitrators had to observe that though the Appellant remained present during the proceedings, but the required document, namely bank statement, relevant books of accounts, distinctive numbers of the shares, etc., were not produced by the Appellant. As against that, considering para. 6 in the award, it has been clearly stated that Respondent No. 1 produced relevant books of accounts, transaction sheet, transaction diary, auction sheet issued by the Respondent No. 2 - Exchange, bills, etc., as required by the ArbitratOrs.

19. Mr. Dave, Ld. Advocate for the Appellant relied upon a decision rendered in the case of Grasim Industries Ltd. and Another Vs. Agarwal Steel, wherein Hon"ble the Apex Court, examining the factual matrix, observed that the Arbitrator committed mistake in accepting the say of the claimant - Respondent that the signature was made erroneously and hence the same was not binding and accordingly, the Appellant was liable to pay to the Respondent. Hon"ble the Apex Court held that when a person signs a document, there is a presumption that he had read the document properly and understood it. In the facts and circumstances of the instant case, it clearly transpires that in the instant case, no such error appears to have been committed by the Arbitrators and, therefore, on

facts, said decision is not helpful to the Appellant.

20. Mr. Dave, Ld. Advocate for the Appellant relied upon decisions rendered in the cases of Union of India (UOI) and Others Vs. Banwari Lal and Sons (P) Ltd., Amaravati District Central Cooperative Bank Ltd., v. United India Fire & General Insurance Co. Ltd., reported in JT 2010 S.C. 41 and K.P. Poulouse Vs. State of Kerala and Another, and P.R. Catering Co. and Another Vs. Oil and Natural Gas Corporation Ltd. and Others, I have taken into consideration above cited decisions and in those cases, Hon"ble the Apex Court interfered with the awards passed by the Arbitrators considering the facts and circumstances of each case, namely important evidence tendered before the Arbitrators, was not taken into consideration, material evidence ignored by the Arbitrators, apparently wrong interpretation arrived at by the Arbitrators of the relevant conditions of the insurance policy and the Arbitrators failed to take into account relevant factors in assessing damages awarded in favour of the Respondent. Perusing the above referred decisions, it can safely be said that in the peculiar facts and circumstances prevailed in said cases, Hon"ble the Apex Court interfered with the awards passed by the Arbitrators. Needless to say that in the instant case, nothing appears that the Arbitrators ignored material evidence produced before them or that the Arbitrators failed to consider any material document produced before them. Thus, perusing the above decisions, it can safely be said that considering the peculiar facts and circumstances emerged in those cases, Hon"ble the Apex Court interfered with the awards.

21. In the decision rendered in the case of Bharat Coking Coal Ltd. Vs. Annapurna Construction, referred by Hon"ble the Apex Court in the case of Union of India v. Banwari Lal (supra), Hon"ble the Apex Court held that the Arbitrator cannot act arbitrarily, irrationally, capriciously or independent of the contract. It was further held that,

There is a clear distinction between an error within the jurisdiction and error in excess of jurisdiction. Thus, the role of the Arbitrator is to arbitrate within the terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction, whereas if he has remained inside the parameter of the contract, his award cannot be questioned on the ground that it contains an error apparent on the face of the records.

Thus, in the instant case, there does not appear that the Arbitrators either acted arbitrarily, irrationally, capriciously or travelled beyond the contract.

22. On behalf of the Appellant, a grievance was ventilated that though Prabhudas Patel remained present before the Arbitrators, he was not examined by the Arbitrators and thus caused injustice to the Appellant. In this connection, considering the note of the Arbitrators dated 24/4/1997 (page 93), an endorsement is made that said Prabhudas Patel remained present and the Arbitrators required further particulars, namely statements of accounts and it

transpires that pursuant to that, statement of account dated 12/3/1996 (page 22) came to be produced, alleged to be the statement of account of Prabhudas Patel. Perusing said statement, it transpires that it pertains to Nileshbhai M. Patel, C/o. Prabhudas Patel. Thus, under such circumstances, the Respondent No. 1 had reason to object that in the books of accounts maintained by him, there was no reference of any transaction of Prabhudas Patel. In the aforesaid background, nothing is forthcoming that the case of the Appellant came to be adversely prejudiced by non-examination of Prabhudas Patel.

23. Mr. Dave, Ld. Advocate for the Appellant submitted that the Respondent No. 1 had concocted false books of accounts and at different time produced different extracts of books of accounts and the Arbitrators erred in relying upon mere entries in such books of accounts. To this, the Respondent No. 1 submitted that as a matter of fact, he did not produce different extracts of his books of accounts, but at different times, he only produced identical copies of accounts before the Arbitrators. Moreover, perusing the award and more particularly considering paras. 5 and 6 in the award, it has been considered that though the Arbitrators on and often requested in writing to the Appellant to produce relevant evidence, the Appellant did not produce the same. Even he refused to produce the bank statement. As against this, so far as the Respondent No. 1 is concerned, along with production of his books of accounts, he produced transaction sheet, transaction diary, auction sheet issued by the Respondent No. 2 - Exchange, etc. When such is the situation, it cannot be said that the Arbitrators committed such error which would attract any of the clauses of Section 34 of the Act. To put it differently, there does not appear that the awards passed by the Arbitrators can be said to be contrary to substantive provisions of law or the Act or is patently illegal or is contrary to justice or morality or is patently unfair and unreasonable or is against the terms of the contract. It is true that the City Court did not elaborately deal with all the contentions raised before it by the Appellant herein, but the City Court definitely dealt with material contentions raised by the Appellant and this Court is of the opinion that the ultimate conclusion arrived at by the City Court in dismissing the application filed by the Appellant before it u/s 34 of the Act, cannot be said to be either perverse or erroneous, which requires this Court to interfere with said findings. The appeal, therefore, is devoid of any merits and deserves dismissal.

24. For the foregoing reasons, the appeal stands dismissed. There shall be no order as to costs.