

(1991) 12 MAD CK 0010
In the Madras High Court
Case No : C.M.A. No. 1012 of 1990

K.P. Loganathan and another	Vs	APPELLANT
K.R.S. Mani alias K.R. Subramanian and others		RESPONDENT

Date of Decision : 15-12-1991

Acts Referred:

Arbitration Act, 1940 — Section 14, 17, 32

Citation : (1991) 12 MAD CK 0010

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : R.S. Venkatachari, for the Appellant; S. Gopalaratnam, for Mr. S. Jothirama, for the Respondent

Judgement

Srinivasan, J.—This Civil Miscellaneous Appeal has been filed by the defendants in O.S. No. 986 of 1989 on the file of sub Court,

Coimbatore against an order made in L.A. No. 1080 of 1989. The said application was filed by respondents herein, who are the plaintiffs in the

suit, for an injunction restraining the appellant a herein from in any manner inducing tenants in the petition mentioned property or leasing out the

same till the disposal of the application. The first respondent, the second respondent and the first appellant are brothers, being the sons of one K.

Ramakrishna Pillai. The third respondent is the wife of the second respondent and the fourth respondent is the son of the first respondent. The

second appellant is the son of the first appellant. The case set out in the plaint by the respondents herein is shortly as follows: The suit property was

purchased by late Ramakrishna Pillai in 1932 and was allotted to his eldest son Radhakrishnan under a family partition dated 27-3-1957.

Radhakrishnan sold the property to plaintiffs 1, 2 and the first defendant by

three different sale deeds dated 22-1-1969, each sale deed being for 1/3rd share. In a family partition between the first plaintiff and the fourth plaintiff, evidenced by registered partition deed dated 28-4-1980, the 1/3rd share of the first plaintiff was allotted to the fourth plaintiff. Plaintiffs 2 and 4 carried on a business along with the first defendant in partnership in the suit property under the name and style of K.R. and Sons Jewellery, each holding 1/3rd share. The partners had several businesses and certain disputes arose among them. They referred the disputes to their family friend Sri. N. Natarajan, Senior Advocate, Madras, under the Indian Arbitration Act. The said arbitrator gave a decision, to which the parties agreed, and pursuant thereto entered into a written agreement dated 29-8-1988. As per the decision of the arbitrator, the suit property and the jewellery business viz K.S. and Sons Jewellery, were to belong exclusively to the branch of the first defendant. It was agreed that defendants 1 and 2 were to pay a sum of Rs. 14,00,000/- to plaintiffs 1 and 4 and a sum of Rs. 13,00,000/- to plaintiff 2 and 3 for a full and final settlement. The first defendant was allowed to retain a sum of Rs. 6,00,000/- and to pay Rs. 11,00,000/- to the first plaintiff and Rs. 10,00,000/- to plaintiffs 2 and 3. A sum of Rs. 1,00,000/- was paid on the date of agreement to each of the branches. Thus, a balance of Rs. 10,00,000/- was payable to the first plaintiffs branch and Rs. 9,00,000/- payable to the second plaintiffs branch. The amount was to be paid within nine months from the date of agreement. In order to ensure prompt and due performance of the contract, the title deed relating to the building at No. 346, Big Bazaar Street, Coimbatore, were deposited as security with the arbitrator. Defendants 1 and 2 failed to perform their part as per the terms of the agreement and they did not pay the amount within the stipulated time. There was a meeting called by the arbitrator in which the first defendant requested for an extension of time. The plaintiffs demanded a security or guarantee for the performance of the agreement for which the first defendant refused. The arbitrator wrote a letter dated 24-7-1989 addressed to all the concerned persons calling upon them to perform the agreement. There was no response by defendant 1 and 2. Thus, the defendants committed a breach of the contract and lost their claim over the suit property. Plaintiff 2 and 4 being co-owners of the property, are entitled to be

put back to their original position as if there was no family arrangement or arbitration and their rights in the suit property remained intact. Therefore,

the plaintiffs are entitled to claim a partition of the suit property and allotment of their respective shares. The reliefs prayed for in the suit are, for

passing of preliminary decree for partition and allotment of 2/3rd share to plaintiffs 2 and 4 for past mesne profits at rate of Rs. 20,000/- from 30-

8-1989 for two months and for future mesne profits at the rate of Rs. 20,000/- per mensem. The plaintiffs also prayed for injunction restraining the

defendants from making structural alterations or causing any act of waste or damage to the suit property and for an injunction restraining the

defendants from inducting tenants in the suit property or leasing out the same.

2. The plaintiffs filed I.A. No. 1080 of 1989 for an injunction restraining the defendants from inducting tenants into the suit property or leasing out

the same. They also filed I.A. No. 1079 of 1989 for an injunction restraining the defendants from altering the suit property in any manner or

causing damage there to.

3. Both the applications were contested by the defendants. In the counter affidavit, the defendants stated that the suit was not maintainable as there

was an award by the arbitrator. They had also stated that they had no idea of leasing out the property to third parties or effecting any structural

alteration to the suit property. They further stated that they were not causing any damage or committing any acts of waste. The counter affidavits

purported to give certain reasons for the non-compliance with the terms of the award by the defendants. It is unnecessary to consider the same at

this stage.

4. The trial court disposed of both the applications by a common order dt 8-12-1989. The trial Court allowed the applications and granted the

reliefs prayed for by the respondents herein. Aggrieved by the same, the defendants have preferred this appeal.

5. The first contention that is put forward by learned counsel for the appellant is that the suit is not maintainable and it is barred by the provisions of

Section 32 of the Arbitration Act. Learned counsel invites my attention to the terms of the document dated 29-9-1988 marked as Ex. A-7 in the

court below. As per the preamble, the matters of disputes between the parties thereto were referred to the arbitration of Sri. N. Natarajan, Senior

Advocate, under the Indian Arbitration Act when misunderstanding arose between the parties in the matter of implementation of an arrangement

entered into between the parties. One of the relevant clauses in the document reads thus:

(5) The building bearing door No. 473, Big Bazaar Street, Coimbatore the jewellery business carried on therein under the name of K.R. And Sons

Jewellery shall belong to and may be continued by K.R. Loganathan and his son L. Anand as partners of M/s. K.R. And Sons Jewellery and no

member of any other family to this agreement shall have any claim on any account whatsoever, all account being treated as fully and finally settled

subject to the following terms and conditions:

The suit property is the property set out in the above clause. Condition No. 2 referred to in the said clause is in the following terms:

(2) Today Sri. K.R. Loganathan and Sri L. Anand paid Rs. 1,00,000/- (Rupees one lakh) each to K.R.S. Mani's branch and Sri. K.R.

Lakshmanan's branch through Banker's cheques bearing Nos. 633890,633891 dated 26-8-1988 of Indian Overseas Bank, Coimbatore - 641

020 and the continuing partners (K.R. Loganathan and K.R.L. Anand) shall pay Rs. 10,00,000/- (Rupees Ten Lakhs) to K.R.S. Mani's branch

and Rs. 9,00,000/- (Rupees Nine lakhs) to Sri. K.R. Lakshmanan's branch and this amount should be paid within 9 months of signing this

agreement

Condition Nos. 4, 5 and 8 read as follows:-

(4) Sri. L. Anand and his brother Sri. L. Hari Ramakrishna represented by his power agent will not in any way alienate the property bearing D.

No. 346 Big Bazaar Street, by way of sale. Hypothecation gift or lease etc., till final settlement as contained in this agreement.

(5) In the event of K.R. Loganathan and L. Anand promptly paying all the amounts due to K.R. Lakshmanan and Mrs. Sarojini, and K.R. S. Mani

and K.R.S. Suresh, Sri N. Natarajan, Senior Advocate, Madras on obtaining such letter of full discharge, shall directly return the document of title

to the Sons of "K.R. Loganathan and secure necessary letter of acknowledgement, for having received the document of title from L. Anand and L.

Hari's Power Agent.

(8) In the event of any doubt or a delay in implementing the above

arrangements the same may be referred to Sri. N. Natarajan, Senior Advocate, Madras whose decision on the same shall be final and all the parties hereto solemnly agree to comply and act as per the decision of Sri. N.

Natarajan. Senior Advocate, Madras.

6. The contention of learned counsel for appellants cannot be accepted in view of the terms set out above. A reading of the above clauses shows

clearly that there was no concluded final arrangement. The allotment of property under clause 5 was expressly subject to the terms and conditions

set out thereunder. One of the conditions prescribed was that a sum of Rs. 9,00,000/- should be paid to K.R. Lakshmanan's branch by appellants

herein within nine months of signing the agreement. Another condition was to the effect that in the event of the amounts being paid by K.R.

Loganathan and L. Anand (the appellants herein) to the respective parties, the arbitrator on obtaining a letter of full discharge, shall directly return

the documents of title to the sons of K.R. Loganathan and secure necessary letter of acknowledgment for having received the document of title.

That shows that the parties intended the arrangements to become final only on the payment as prescribed in the agreement. Condition No. 4, which

I have extracted earlier, specifically uses the terms ""till final settlement as contained in this agreement"". That also shows that the document was not

by itself a final settlement.

Condition No. 8 put the matter beyond doubt. Under that clause, the parties, were required to refer the matter again to the arbitrator in the event

of any doubt or delay in the implementation of the arrangement. After such reference, the arbitrator was expected to give his decision and that

decision shall be final and the parties shall act accordingly.

7. After the appellants failed to make payments within the time specified the arbitrator was approached by the parties and he wrote a letter dated

24-7-1989 to all the parties concerned. In that letter, which is marked as Ex. A-9, he called upon the parties to forthwith honour their

commitments and relieve him of his responsibilities within one week from the date of receipt of the communication. He has referred to the deadlock

which had arisen by the non-payment of the amount in time on the prayer for extension of time by the appellants herein besides their refusal to

furnish security or guarantee for honouring their commitments, when the same

was demanded by the respondents. It is not in dispute that the arbitrator wrote a letter on 22-9-1989 to the parties that they should move a Court of competent jurisdiction for appropriate orders. Thus, the parties had chosen to approach the arbitrator as per the terms of Condition No. 8 referred to above and the arbitrator gave his decision that they should only approach the Court for appropriate orders. Hence, according to the agreement, on which reliance is placed by learned counsel for the appellants, the parties were bound to approach the Court as that is the ultimate decision of the arbitrator. There is, therefore, no substance in the contention that there is a concluded arbitration award and the suit is not maintainable as such. On the terms of the agreement referred to by the appellant's counsel, viz., Ex. A-7, the parties are entitled to go before the Civil Court as the arbitrator has directed them to do so.

8. Even otherwise, Section 32 of the Arbitration Act will not bar the present suit as it will not fall within the scope of the section. The section reads

as follows:

Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be enforced, set aside, amended, modified or any way affected otherwise than as provided in this Act.

The Section bars only such suits in which a question arises as to the existence, effect or validity of an arbitration agreement or award or a question arises as to the enforcement or setting aside or amendment or modification of the award. In the suit as framed by the respondents herein, no such question arises.

9. The Supreme Court had occasion to consider the scope of Section 32 of the Arbitration Act in *Kashinathsa Yamosa Kabadi, etc. Vs.*

Narsingsa Bhaskarsa Kabadi, etc., . The relevant passage in the judgment reads thus:

It may be sufficient to observe that where an award made in arbitration out of court is accepted by the parties and it is acted upon voluntarily and a

suit is thereafter sought to be filed by one of the parties ignoring the acts done in pursuance of the acceptance to the award, defence that the suit is

not maintainable is not founded on the plea that there is an award which bars

the suit but that the parties have by mutual agreement settled the dispute, and that the agreement and the subsequent actings of the parties are binding. By setting up a defence in the present case that there has been a division of the property and the parties have entered into possession of the properties allotted, defendant No. 1 is not seeking to obtain a decision upon the existence, effect or validity of an award. He is merely seeking to set up a plea that the property was divided by consent of parties. Such a plea is in our judgement not precluded by anything contained in the Arbitration Act.

The above dictum of the Supreme Court will apply on all fours to the present case. In this case the plea of the parties could, if at all, be only that the plaintiffs are not entitled to get any relief in the suit as an agreement between them governs the questions which arise for consideration in the suit and pursuant to the said agreement, the plaintiffs will not be entitled to the reliefs prayed for by them.

10. There is a further feature in this case that there is no award within the meaning of the Arbitration Act. The Act contemplates only an award in writing to be signed by the arbitrator. Section 14 of the Arbitration Act prescribes that when the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof. There is no provision in the Act which permits an oral award to be made. If an oral award is made by an arbitrator, that will not be governed by the provisions of that Act, whether it as validity otherwise or not. It is not necessary for me to pronounce in this case as to whether any oral award is valid. Suffice it for me to say that any oral award will not fall within the scope of the Arbitration Act, 1940. Hence, the plea that the present suit is barred by section 32 of the Act is not available to the appellants.

11. Learned counsel for the appellants contends that Ex. A-7 should be treated as an award under the provisions of the Arbitration Act. I do not agree with this contention. The document has not been signed by the arbitrator. Nor does it set out any decision of the arbitrator as such. It merely refers to the fact that the arbitrator gave his decision and the parties have accepted the same. The document by itself will not amount to a decision of the arbitrator and, therefore it is not award within the meaning of the

Arbitration Act.

12. If the document can be considered as a family arrangement between the parties, that will not enable the appellants to invoke Section 32 of the

Arbitration Act as held in Kashinathsa Yamosa Kabadi, etc. Vs. Narsinga Bhaskarsa Kabadi, etc.,

13. Learned counsel for the appellants contended that the plaintiffs are estopped from claiming any right to the suit property, as the property has

been declared to belong to the defendants and the only right of the plaintiffs is to claim the amount agreed to be paid to them under the agreement

dated 29-9-1988. That is not a question which can be decided as a preliminary issue at this stage of the case. The pleas of estoppel will have to be

considered on the basis of the facts which are placed before the Court at the time of trial. The Court has to consider whether a case of estoppel

has been made out on the facts of the case. At this stage, I am only concerned with the question whether the suit as framed is not maintainable

because of the provisions of Section 32 of the Arbitration Act does not bar the present suit.

14. Learned counsel for the appellant referred to the judgment of the Supreme Court in Satish Kumar and Others Vs. Surinder Kumar and Others,

and relies on a passage in that judgement. Which is extracted hereunder. That passage is an extract from an earlier judgment of the Supreme Court

in M/s. Uttam Singh Dugal and Co. v. Union of India, Civil Appeal No. 162 of 1962, dated 11-10-1962. The passage was quoted with approval

by the Supreme Court in the reported judgement. The passage reads as follows:

The true legal position in regard to the effect of an award is not in dispute. It is well settled that as a general rule, all claims which are the subject-

matter of a reference to arbitration merge in the award which is pronounced in the proceedings before the arbitrator and that after an award has

been pronounced, the rights and liabilities of the parties in respect of the said claims can be determined only on the basis of the said award. After

an award is pronounced, no action can be started on the original claim which had been the subject-matter of the reference. As has been observed

by Mookerjee, J. in the case of Bhajahenri Saha Barilkya V. Behary Lal Basak (1909) ILR 33 Cal 881 at p. 898, "the award is, in fact, a final

adjudication of a Court of the parties" own choice, and until impeached upon

sufficient grounds in an appropriate proceeding, an award, which is on the face of it regular; is conclusively upon the merits of the controversy submitted, unless possible the parties have intended that the award shall not be final and conclusive.....in reality, an award possesses all the elements of vitality even though it has not been formally enforced and it may be relied upon in a litigation between the parties relating to the same subject-matter. This conclusion, according to the learned Judge, is based upon the elementary principle that, as between the parties and their privies, an award is entitled to that respect which is due to judgment of a court of last resort. Therefore, if the award which has been pronounced between the parties has in fact, or can, in law, be deemed to have dealt with the present dispute, the second reference would be incompetent. This position also has not been and cannot be seriously disputed.

15. It is clear from the said passage itself that the parties should intend that the award shall be final and conclusive. If the parties had not intended the award to be final and conclusive, there is no question of the suit being barred. In the present case, I have already referred to the relevant clauses in the agreement dated 29-9-1988 and pointed out that the parties did not intend that the agreement to be final and conclusive. They had referred to some more acts to be performed by the parties thereto in order to have a full and final settlement. When the agreement itself contemplates some more acts to be performed and in particular a reference to the arbitrator in case of delay in implementation and a decision by him thereafter, there is no substance in the contention that the agreement dated 29-8-1988 would constitute a final award which would prevent the parties from exercising their rights in a civil Court. The facts in the case before the Supreme Court were different and the dictum of the Supreme Court, if applied to the present case, will clearly show that the present suit is not barred.

16. Learned counsel made a reference to *Gouri Shankar Prasad Sinha Vs. The State of Bihar*, and *Kehar Dass Vs. Tarak Singh and Another*, which had followed the judgment of the Supreme Court. There is no necessity to refer to those decisions in detail, as on the facts of this case, they do not have any bearing.

17. Learned counsel for the appellants contended that the more fact that the

arbitrator had not signed the agreement dated 29-9-1988 would only be an irregularity in the award and the agreement should be treated as or award without the signature of the arbitrator. According to him any irregularity in the award will not enable the parties to ignore the same and approach the civil Court. Learned counsel places reliance on the judgment of Calcutta High Court in *Kripa Sindhu Biswas Vs. Sudha Sindhu Biswas and Others*, . It was observed in that case that the Court has neither the right nor the duty to enquire into the merits of the award made by the arbitrator and any defect or irregularity in the making of the award may be cured by the waiver implied from the act of the party going in before the arbitrators and taking a chance of a favourable decision and therefore acting on that decision to the injustice of the other side. It was also observed that a party to a partition award which is acted upon throughout by the parties cannot resile from the award and bring a suit for fresh partition on the allegation that the award is not binding on him especially when it is impossible to restore the parties to their original position before the award. Neither of the observations would apply to the facts of the present case. In the first place, there is no award in this case. Secondly, (sic) if the agreement dated 29-9-1988 is to be treated as an award, it is for the appellants to prove by evidence that the agreement had been acted upon and the parties are placed in such a position that it is impossible to restore them to their original position. That will depend only on the evidence to be adduced in the case.

18. Learned counsel referred to the judgments of the Bombay High Court in *Delux Silk Traders Vs. Satyanarayan Mahendrakumar and Others*, and *Akbar Ali and Others v. Mumtaz Hussain and another*. In both the cases, the Court had to consider the bar u/s 32 of the Arbitration Act and there was no dispute on the question whether there was an award or not. The Court observed that even though the award was not filed into Court and a decree was not passed in terms of the award, still the parties could be bound by that award, when they had acted on the same. Those judgments will have no bearing on the present question.

19. Learned counsel for the appellants referred to the judgement of the Orissa High Court in *Govinda Gouda Vs. Kalu Houda and Another*, . That was also a case of the award not being filed in Court and made a rule of the

Court. But, the parties had enjoyed the properties allotted to them separately and exclusively as per the award of the arbitrator. The Court followed the dictum of the Supreme Court in *Kashinathsa Yamosa*

Kabadi, etc. Vs. Narsinga Bhaskarsa Kabadi, etc., and held that the suit was barred. That will have no relevance in the present case.

20. My attention was drawn to the judgment of a Division bench of this Court in *V.N. Krishna Aiyar Vs. V.N. Subbarama Aiyar and Another*,

The only question which was decided was that of jurisdiction of a subordinate court with reference to the passing of decree on the basis of an

award. The Division Bench held that unless the Court had jurisdiction over the entire subject matter of the award, it could not pass a decree on

the basis of the award dealing only with those portions of the properties which were situated within its jurisdiction. That ruling has no relevance

whatever to the present case.

21. Learned counsel for the appellants placed reliance on the judgement of Division Bench of this court in *Pamudurthi Suryanarayana Reddi and*

Others Vs. Pamudurthi Venkata Reddi and Others, . The Division Bench held that the inhibition in Section 32 of the Arbitration Act is confined

merely to plaint by which a decision upon the existence, effect or validity of an award is sought and its provisions do not extend to a defence as

opposed to the filing of a suit. It was observed that a defendant was not precluded from putting forward an award which has been fully performed

by him, but which was not filed u/s 14 of the Act and according to which a judgment was not pronounced or a decree given u/s 17 of the Act, in

answer to the plaintiffs claim which was the subject-matter of the reference and the award. The ruling is similar to that of the Supreme Court in

Kashinathsa Yamosa Kabadi, etc. Vs. Narsinga Bhaskarsa Kabadi, etc., and it has no bearing to the present case at this stage.

22. In *Moolchand Jothajee Vs. Rashid Jamshed Sons and Co.*, referred to by learned counsel for the appellants, it was held that a party to an

arbitration award under the Arbitration Act is not entitled to enforce such award by way of suit. That was a case which clearly fall within the four

corners of Section 32 of the Arbitration Act. That has no relevance to the present case.

23. Learned counsel submitted that if a question of jurisdiction is raised, it should

be decided as a preliminary issue by the Court. He referred to the judgments of the Bombay High Court in *M/s. A.K. Porpunderwala A Sons v. Gulam Hussatin Aliehaj Natihet And Another* AIR 1974 Bom

283 and *Radhakishin N. Advani Vs. Sheila Gobind Mirchandani and Another*, . I have now held that the contention raised by the appellants is not

sustainable and the Court has jurisdiction to entertain the suit filed by the respondents herein.

24. Learned counsel contended that the effect of a document cannot be altered by the subsequent conduct of the parties. He placed reliance on the

judgment of the Supreme Court in *Kalyani v. Narayanan* 1980 2 S.C.J. 332. According to him, the document dated 29-9-1988 has the effect of

allotting the suit property to the appellants and just because the appellants had not paid the money subsequently, it will not erase or alter the effect

or the document. It is contended by him that once the property stood allotted to the appellants herein by the document dated 29-9-1988, they

were not entitled to claim partition of the suit property. I have already held that the document was not a final settlement and there is no question of

it allotting finally the properties to the appellant herein. Hence, the contention has no substance.

25. Learned counsel for the appellants placed reliance on the judgment of the Privy Council in AIR 1938 189 (Privy Council) It was held in that

case that in a Hindu Joint family, the defining of shares may be expressed by an agreement between the coparceners and the agreement may

contain a declaration of their shares in the estate. It was held that even an agreement between the members of a joint family, whereby they appoint

arbitrators for dividing the joint family property among them, amounts to severance of the joint status of the family from the does of the agreement

and that the fact that no award had been made was not evidence of the renunciation of intention to separate. That case will have no relevance

where, the case set out in the plaint is that the property was purchased by plaintiffs 1 and 2 and the first defendant under three different sale deeds,

each purchasing 1/3rd shares. According to the plaint, the parties were only co-owner and there is no question of any joint family in existence

between the plaintiffs and the defendants.

26. It is next argued by learned counsel for the appellants that the Court below

ought not to have granted injunction as the appellants had filed affidavits of undertaking. The copies of the affidavits filed by the appellants have been produced before me. In one of the affidavits, the undertaking is that the first defendant is not altering the physical features of the property and he has no idea of any kind to cause any damage to the suit property. The following statement is also found: ""I undertake not to alter the physical features and not cause any damage to the property"" In the other affidavit, the undertaking is to the effect that the first defendant will not lease out the property to anyone till the disposal of the suit.

27. The lower Court has thought fit to grant injunction on the ground that hardship will be caused to the plaintiffs if after giving an undertaking the defendants violate the same during the pendency of the suit. He accepted the argument advanced on behalf of the plaintiffs that having regard to the conduct of the defendants, it is necessary to grant an injunction instead of merely accepting the undertaking.

28. I am of the view that an undertaking given by a party will have the same force as an order of injunction passed by the Court. Hence, there is no necessity to suspect that the defendants would violate the undertaking in this case during the pendency of the suit. I take the view that the undertaking can be accepted and recorded, and order can be passed on that basis.

29. Thus, while holding that the suit is maintainable and rejecting the contention of the appellants as regards the non-maintainability of the suit, I accept the undertaking given by the defendants, which shall be in force till the disposal of the suit and hold that in view of the undertaking, it is not necessary to pass order of injunction. It is, however, made clear that the defendants shall not in any manner violate the undertaking given by them during the pendency of the suit.

30. The appeal is allowed to the limited extent indicated above. Instead of an order of injunction, there will be an order recording the undertaking given by the defendants in the suit and as a consequence of the undertaking, the application for injunction stands dismissed. The trial Court is directed to keep the affidavits of undertaking of record till the disposal of suit.

20.2.1990.

31. At the instance of learned counsel for the respondents, the matter was

posted today for "being mentioned". A xerox copy of the written statement filed by the defendants in the suit has been produced before me and my attention is drawn to paragraph 12 of the written statement. The relevant portion of the said paragraph reads as follows:-

The memorandum dated 29.9.1988 is not an arbitration agreement. Nor is it an award not signed any arbitrator. It is a memorandum signed by the brothers and member of this respective branch evidencing the terms agreed to amongst them as a family agreement adjusting their rights in the properties and business of the family. The plaintiffs are not right in calling an arbitration agreement.

The written statement is stated to have been in trial Court on 22-1-1991. Though the appeal was filed in this court on 6-11-1990, it was taken up for hearing only on 13-2-1991. In spite of the fact that the stand taken in the written statement is that the document dated 29-9-1988 is not an arbitration award or agreement, counsel for the defendants appearing in this court argued vehemently at length that the said document is an arbitration award within the meaning of Section 32 of the Arbitration Act. Though the cited several decisions on the date of hearing, he was not satisfied with same and he cited some more decisions on 15-2-1991 just before started delivering my judgement. It is very unfortunate that counsel had argued for a position directly contrary to the stand taken by his client in the written statement.

32. Today, it is represented by learned counsel for the appellants that they had not perused the written statement though a copy of the same was furnished to them by counsel appearing for the defendants in the Court below and if they had known the contents of the written statement they would not have advanced such arguments. Counsel appearing for the defendants in the court below was present in this Court at the time of hearing and was actively assisting learned counsel for the appellant in this Court. There was no justification for him in failing to inform learned counsel appearing in this Court of the contents of the written statements. Having already delivery my judgment in the appeal, rejecting the arguments advanced by counsel on the applicability of S. 32 of the Arbitration Act, the only thing that can be done by me at this stage is to place on record my indignation at and disapproval of the way in which the precious time of this

Court was wasted by the appellants counsel in this case.