
(2013) 03 BOM CK 0265

In the Bombay High Court

Case No : Arbitration Petition No's. 300, 301, 302 and 303 of 2012

Pradyuman Kumar Sharma and Kuber Planters Limited

APPELLANT

Vs

Shri Jaysagar M. Sancheti, Miss Sangita Jaysagar Snacheti
and Shri Rahul Chinsush Sancheti

RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 12, 13, 13(2), 14
Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10, Order 26 Rule 10(2)
Evidence Act, 1872 — Section 73

Citation : (2013) 3 ABR 315 : (2013) 4 ALLMR 286 : (2013) 5 MhLj 86

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Anil Anturkar assisted with Amit Sale assisted with Ms. Kalyani T. and Deepak Kapoor instructed by Sarang S. Ardhye, for the Appellant; Shrihari G. Aney a/w. Kirit Hakani and Rahul Hakani instructed by . M/s. P.V. Nelson Rajan and Rahul Hakani for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J.—By these petitions filed u/s 34 of the Arbitration & conciliation Act, 1996 (for short herein after "the Act"), the petitioner seeks to challenge the impugned awards all dated 30th March 2009 declared by the learned arbitrator. By consent of parties, in view of the identical facts in all the four matters and common argument advanced by both the parties, all aforesaid petitions were clubbed and heard together finally at the stage of admission and are being disposed off by common order. I shall summarise the facts in arbitration petition No. 300 of 2012 which were referred by both the parties.

2. The petitioner has advanced submissions only on three issues though various grounds are raised in the petitions and thus, facts and submissions relating to those three issues canvassed by the petitioner are set out hereinafter.

3. The petitioner was carrying on business in the name and style of M/s. Kuber

Builders and also in the name and style including Kuber Planters Ltd. Under a letter of allotment dated 23rd December 1997 issued by CIDCO, the petitioner acquired the lease hold interest in respect of land being piece and parcel of land admeasuring approximately 2382.12 sq. mtrs bearing No. 18/4, Sector 10, Vashi, District Thane, Maharashtra on the terms and conditions contained therein. On 10th July 2000, the petitioner and the respondent entered into an agreement by which, the services of the petitioner for development and completing the incomplete building for commercial and residential use on profit sharing basis on the terms and conditions set out in the said agreement was engaged. On 16th August 2000, the Competent Authority under the Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999 (for short MPID Act) attached the said property in possession of the petitioners and also other three properties being Kuber Heritage, Kuber Citadel and Kuber Embassy which were subject matter of companion arbitral references and subject matter of these petitions. Various proceedings were filed by both the parties in this Court challenging the orders passed by the learned Special Judge under MPID Act.

4. Both the parties thereafter entered into a Deed of Dissolution dated 4th December 2001 thereby agreeing to dissolve all the four joint venture agreements entered into between them on the terms and conditions set out therein. It is the case of the petitioner that the petitioner handed over six post dated cheques for an aggregate value of Rs. 16.50 lacs to the petitioners, however three cheques were returned as dishonoured.

5. The dispute arose between the parties. By letter dated 30th October 2002, the respondents invoked the arbitration agreement and thereafter filed application u/s 11 of the Act. By an order dated 28th February 2003, passed by the learned designate of the Honourable Chief Justice of this Court appointed Mr. Justice V.R. Datar, former Judge of this Court as the sole arbitrator. During the period between 21st August, 2003 and 12th May 2004, both the parties filed their respective pleadings. The petitioners also filed counter claim before the learned arbitrator. Both the parties also filed affidavits in lieu of examination-in-chief. On 9th September 2004, cross examination of witness of respondents was completed. On 5th March 2005, cross examination of petitioners' witness was completed. On 21st April 2005, Mr. Justice V.R. Datar, the learned arbitrator resigned. The respondents thereafter filed application u/s 11 for appointment of arbitrator. By an order dated 26th September 2005, the Honourable Chief Justice appointed Dr. Justice B.P. Saraf, former Chief Justice of Jammu & Kashmir High Court and former Judge of this Court as sole arbitrator. By an award dated 30th March 2009, the learned arbitrator declared that the agreement dated 10th July 2000 was valid, subsisting and binding on the parties to the arbitration and ordered and directed the petitioner to specifically perform the agreement for joint venture dated 10th July 2000 and to sign, execute and deliver all deeds and documents to do all acts and things necessary. The learned arbitrator ordered and directed the petitioner to pay an amount of Rs. 11,58,500/- by way of costs

within three months from the date of award and in case of failure to pay, directed to pay the said amount with interest @ 10% per annum from the date of expiry of three months from the date of award. The learned arbitrator rejected the counter claim filed by the petitioner. Similar award was declared in other three matters also which are subject matter of arbitration petition Nos. 301 to 303 of 2012.

6. Mr. Anturkar, the learned counsel appearing on behalf of the petitioners made three submissions for consideration of this Court as under:

(i) the learned arbitrator did not give full opportunity to the petitioner to represent his case;

(ii) the learned arbitrator violated the mandatory procedure u/s 24 of the Act; and

(iii) the learned arbitrator acted with biased and prejudiced mind against the petitioner and the award is thus, vitiated on this ground.

7. I shall first deal with the first two issues raised by the petitioner alleging lack of full opportunity and violation of provisions of Section 24 of the Act by the learned arbitrator, together.

8. Mr. Anturkar, the learned counsel submits that by virtue of Section 19 of the Act, arbitrator has been relieved of the procedure contemplated by Code of Civil Procedure, 1908 (CPC) as well as provisions of Evidence Act. It is submitted that the legislature which was fully aware of the position, that the arbitrator's award is almost final and incapable of being challenged on merit, has deliberately used the phrase viz. "full opportunity" rather than "reasonable opportunity" or "fair opportunity" which even in the absence of express reference also would have been applicable to the arbitrator. It is submitted that if in a similar circumstance, what a civil court would have done, arbitrator is supposed to do something much more than that, which is submitted is "full opportunity." The learned counsel submits that in this case, full opportunity was not given to the petitioner by the learned arbitrator. It is submitted that Mr. Mathur's report, handwriting expert, was on record. Under Order 26 Rule 10 of the CPC, Mr. Mathur's report would have been part and parcel of record and which ought to have been looked into by a civil Court even if the witness was not examined. It is submitted that Mr. Mishra's report, handwriting expert, was also not taken into consideration although that was on record. It is submitted that by virtue of Order 26 Rule 10 of CPC, Mr. Mishra's report would have been part and parcel of record and proceedings and would have been looked into by civil Court even if Mr. Mishra was not examined. It is submitted that in Civil Court, if the party wants to dispute the Commissioner's report, then that party has to apply for cross-examination. However, in case of arbitration proceedings, it is not necessary, in view of the fact that Evidence Act does not apply to arbitration proceedings and thus, examination of Mr. Mishra or Mr. Mathur was not necessary.

9. The learned counsel submits that in the instant case, application was made by the petitioner u/s 26 of the Act before the learned arbitrator. It is submitted that any Civil Court would have allowed the said application made by the petitioner, even if made belatedly. It is submitted that even if Civil Court would not have allowed the said application because it was made belatedly, the arbitrator ought to have allowed it as the arbitrator is bound to render full opportunity to the parties u/s 18 of the Act. The learned arbitrator, however rejected that application. It is submitted that arbitrator would have been more liberal than a Civil Court in giving full opportunity.

10. Mr. Anturkar, the learned counsel appearing for the petitioner submits that on 2nd May 2006, when the petitioner made an application u/s 26 of the Act, the learned arbitrator rejected the said application and refused to appoint any Expert at that stage and held that in the facts and circumstances of the case at that stage, he did not find any reasons to exercise powers u/s 26 of the Act. If at any stage of the proceedings in the course of arguments or thereafter, if it was felt necessary to exercise the power in respect of any specific issue, which may require to be determined u/s 26 of the Act, appropriate orders would be passed at that stage in that regard. The learned counsel submits that when at the subsequent stage, the petitioner applied for an opportunity to lead evidence or to refer the disputed documents for opinion of handwriting expert, the learned arbitrator refused the said opportunity contrary to his own order dated 2nd May 2006, which indicates that the learned arbitrator had violated the principles of natural justice and had not given full opportunity to the petitioner.

11. The learned counsel submits that u/s 26 of the Act in such circumstances, the learned arbitrator himself would have appointed an Expert with a view to render assistance, however, the learned arbitrator rejected the said application made by the petitioner u/s 26 for referring the disputed documents to an Expert for opinion. The learned counsel lastly submitted on this issue that in view of allegations of fraud and forgery made by the petitioner, the learned arbitrator, at least, should have himself compared the admitted signature of the parties with the disputed signature, which he failed to do.

12. On the issue that the learned arbitrator did not provide an opportunity to the petitioner to lead his evidence, oral hearing as contemplated under the provisions of Section 24 of the Act, the learned counsel submits that as per the proviso to Section 24 of the Act, the arbitrator was bound to allow the application of a party to lead oral evidence, if such application was made by either party. It is submitted that the statutory obligation cast on the arbitrator u/s 24, is to hold oral hearing with subject to only two conditions, viz. (a) if such an application is made at an appropriate stage of proceedings and (b) parties have agreed that no oral hearing shall be held. It is submitted that in the instant case when an application u/s 26 was made and the same was rejected by the learned arbitrator, considering the stage at which such application was made and the award having been delivered after almost three years from the date of such

rejection of such application u/s 26, the application made by the petitioner for permission to lead evidence before the closure of the proceedings, ought to have been granted by the learned arbitrator as that stage was an appropriate stage. It is thus, submitted that the learned arbitrator has failed in discharging statutory obligation to hold hearing u/s 24(1) of the Act.

13. It is submitted that Mr. Mishra who was proposed to be examined by the petitioner and made himself available and by the time he reached in arbitration meeting hall, the learned arbitrator had already adjourned the meeting. It is submitted that in view of the serious allegations of fraud, forgery and fabrication by the petitioner, the learned arbitrator considering the controversy invoked, ought to have given an opportunity to find out the truth by imposing some cost on the petitioner, as the dispute raised by the petitioner would go to the root of the matter.

14. The learned counsel then submits that if one of the party applies for opportunity to lead his evidence which is part of hearing u/s 24, the learned arbitrator ought to have given an opportunity of hearing which includes oral evidence. It is submitted that if a party applies for oral evidence at any stage, the learned arbitrator has no discretion to reject such application.

15. Mr. Shrihari Aney, the learned senior counsel appearing on behalf of the respondent responded on these issues raised by the petitioner. The learned senior counsel submits that Section 19(3) & (4) of the Arbitration and Conciliation Act cannot be read in isolation but has to be read with Section 18 and proviso to Section 24 of the said Act. It is submitted that the "Act" should be read as whole and that the "Section" is also to be read as whole by applying cardinal principles of interpretation and construction of statute. It is submitted that Section 18 to 27 comprising in Chapter V are required to be read together along with other provisions of the Act. It is submitted that Section 19 of the said Act provides the determination of Rules of Procedure. It is submitted that in the present case, the parties did not decide the procedure to be followed by the arbitral tribunal in conducting its proceedings. It is submitted that the term "the full opportunity to present his case" is subject to the procedure and the extent provided under the provision of Section 19 of the said Act. It is submitted that the legislature in Section 19(3) has used the words " it considers appropriate" shows that the term "full opportunity" has to be seen from the arbitrator's point of view. The learned senior counsel submits that in this case, the record would indicate that the learned arbitrator made all attempts to give the petitioner full opportunity of hearing at every appropriate stage and the learned arbitrator was satisfied about the same. Both the parties were allowed to file pleadings and evidence oral as well documentary and also respective arguments in writing and also oral. It is submitted that proviso to Section 24(1) provides that the arbitral tribunal shall hold oral hearings at appropriate stage of the proceedings on request by a party, unless parties have agreed that no oral hearing shall be held. It is submitted that "full opportunity" is thus required to be given at appropriate

stage alone and such opportunity is subject to proviso to Section 24(1) of the said Act. The learned senior counsel placed reliance upon a paragraph from the commentary of Justice R.S. Bachawat's "Law of Arbitration and Conciliation" 5th Edition, page 1136 on this issue, in which opinion of Russel on arbitration is quoted which is extracted as under:

The expression unused in Section 18 of the Indian Act of 1996 is "full opportunity" on the lines of Article 18 of UNCITRAL Model Law. On this aspect, RUSSEL ON ARBITRATION opines as follows:

The right to present his case does not mean that a party has an unfettered right to make submissions or present evidence as and when he wishes. It is noteworthy that Section 33(1)(a) of the Arbitration Act 1996 referees to a reasonable opportunity whereas Article 18 of the Model Law on which it is based refers to a full opportunity. This reflects the DAC's intention that the right to present the case should not be without limit.

16. The learned senior counsel submits that the right to represent his case by a party does not mean that a party has an unfettered right to make submissions or present evidence as and when he wishes. It is submitted that the expression, "full opportunity" is subject to other provisions of the Act particularly Section 19, 24 and other provisions of Part V thereof. It is submitted that the expression "full opportunity to present the case" has to be read also in context of treatment to the parties with equality as contemplated in the first part of Section 18 of the said Act. The learned senior counsel then submits that after closing of petitioner's evidence on 25th April 2006, the petitioner made application u/s 26 of the Act, application u/s 27 of the Act to this Court and also petition u/s 14 of the Act in order to jeopardize the entire arbitration proceedings. It is submitted that after closing of the evidence, as many as 16 adjournments were sought by the petitioner till 22nd October 2007. Petitioner utilized 11 dates to make his final arguments. On 18th September 2008, that is after completion of final arguments by the petitioner, an application u/s 12 of the Act alleging bias, which was mere repetition of the allegations made in petition filed u/s 14 of the Act earlier was made with a view to prolong/frustrate the arbitration proceedings which had started in 2003 and almost 5 years were over. The learned counsel for the respondents invited my attention to the facts narrated in the notes of arguments submitted by the respondents in this matter to demonstrate that the learned arbitrator had given full opportunity to both the parties.

17. The learned senior counsel submits that reports of Mr. Mathur and Mr. Mishra were not under Order 26 of the CPC or obtained u/s 26 of the Act by the learned arbitrator. The arbitral tribunal had never appointed Mr. Mathur or Mr. Mishra as Commissioner to examine the signature on the disputed document. It is pointed out that the scheme of Order 26 Rule 10 of the CPC is in respect of commissions for local investigation and in such case, the commissioner is collecting evidence on behalf of the Court and the report of the commissioner is treated as evidence under Rule 10(2) of the CPC. It is submitted that reports of Mr. Mathur and Mr.

Mishra are not evidence and could not be read unless the same was proved in accordance with the procedure adopted u/s 19 read with Section 24 of the Act. The learned senior counsel submits that when the evidence was closed, Mr. Mathur was not attending at that point of time and the petitioner had applied u/s 27 of the Act before this Court for issuance of witness summons. The petitioner, however did not press the said petition filed for issuance of witness summons to Mr. Mathur and thus, the said petition was dismissed/disposed of by this Court on the ground that the evidence of the petitioner was over.

18. The learned senior counsel then pointed out that the earlier application filed u/s 26 of the Act by the petitioner before the arbitral tribunal came to be disposed of vide order dated 2nd May 2006. The said order dated 2nd March 2006 was challenged before this Court by filing Arbitration Petition No. 367 of 2007 u/s 14 of the Act also alleging bias against the learned arbitrator. By an order dated 8th October 2007, this Court dismissed the said arbitration petition (367/07). Being aggrieved by the said order, the petitioner filed Special Leave Petition. The Honourable Supreme Court dismissed the said SLP filed by the petitioner and directed the learned arbitrator to decide the issue u/s 16 raised by the petitioner.

19. The learned senior counsel submits that in view of Section 19 read with Section 24 of the Act, it is not permissible for the parties to produce evidence after closure of their evidence and when submissions of the parties are substantially completed.

20. It is submitted that if the learned arbitrator would have permitted production of additional and new evidence at that stage, that would have been in violation of the procedure u/s 19 read with Section 24 and would have been in violation of principle of natural justice with the respondents. The learned counsel submits that the agreements referred to and relied upon by the respondents in arbitration proceedings were also relied upon by the petitioner in various proceedings filed in criminal Court and also in this Court. The respondent had produced certified copies of the agreements which were not disputed by the petitioner. The petitioner was fully aware that the original agreements were confiscated in the criminal proceedings. The learned senior counsel submits that full opportunity was given to the parties keeping in mind the provisions of Section 19(4) relating to the admissibility, relevance, materiality and weight of any evidence, and the same was subject to provision of Section 24 of the Act.

21. As far as submission of the petitioner that the learned arbitrator did not compare the disputed signature u/s 73 of the Evidence Act is concerned, the learned senior counsel submits that the said argument is self defeating because as per his own submissions, the Evidence Act was not applicable. The learned senior counsel invited my attention to paragraph 34 of the impugned award in which the arbitral tribunal has rendered a finding that the signature appearing in the copy of the agreement relied upon by the respondent is that of the petitioner herein. The learned arbitrator also rendered a finding that the petitioner had not

led any evidence to prove his allegations of forgery and the contentions of the petitioner that his signature was forged by the respondent, is not tenable. The learned senior counsel submits that both the agreements produced by both the parties were compared by the learned arbitrator and thereafter rendered a finding that allegations of forgery made by the petitioner was not tenable.

22. The learned senior counsel then submits that the application made by the petitioner for permission to lead further evidence, after completion of evidence and arguments by the respondents, cannot be said to have been made at appropriate stage as contemplated u/s 24 of the Act as is apparent from the observations and finding of the learned arbitrator recorded in paragraphs 31 to 34 of the impugned award. The learned senior counsel thus submits that the petitioner thus had waived their rights u/s 4 of the Act. It is submitted that alleged violation of proviso to Section 24(1) of the Act, cannot be a ground of challenge u/s 34(2) of the said Act. Sections 18, 19 and 24 of the Act read thus:

18. Equal treatment of parties:

The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

19. Determination of rules of procedure:

(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

24. Hearings and written proceedings:

(1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate state of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to, the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

23. Perusal of the petition indicates that on the first issue that the learned arbitrator did not give full opportunity to the petitioner to represent his case, the petitioner has raised a ground in the petition that the petitioner was operated upon for kidney transplant in June 2008 and was advised bed rest till 17th October 2008. It is alleged that the arbitration proceedings were closed abruptly on 25th September 2008. The petitioner wanted to remain present at the time of final arguments and thus, petitioner was deprived of full opportunity to present his case as contemplated u/s 18 of the Act. The petitioner has also contended in the petition that for the reasons best known to the learned arbitrator, the request of the petitioner was turned down by the learned arbitrator for adjournment. Though the petitioner was advised bed rest and was unable to remain present, the learned arbitrator kept the matter on 25th-27th October 2008, when it was not possible for the petitioner or his counsel to attend the proceedings. The learned arbitrator, thus, violated the principles of natural justice totally. The learned counsel for the petitioner has however raised several issues on this aspect across the bar.

24. On the issue that the learned arbitrator alleged to have violated the mandatory procedure u/s 24 of the Act, a ground is raised that the application of the petitioner to lead evidence of his witness to prove that the agreements relied upon by the respondents were fabricated or to refer the said issue to an Expert is rejected, which is in gross violation of principles of natural justice and violation of Section 24 of the Act.

25. Perusal of the record indicates that the learned arbitrator had granted several adjournments on the request of the petitioner. Out of 61 sittings held by the learned arbitrator, the petitioner had sought adjournment on more than 23 sittings. The petitioner argued on 11 days of hearing before the learned arbitrator to make his final arguments. After 27th October 2005, the learned arbitrator had granted liberty to the petitioner to approach this Court for the purpose of obtaining witness summons on various witnesses including Mr. Mathur, the handwriting expert. Though the petitioner filed four arbitration applications u/s 27 of the Act in this Court praying for issuance of witness summons including on Mr. Mathur, the petitioner did not pursue the said petitions and filed affidavit of evidence only in respect of two witnesses before the learned arbitrator. The respondents had cross-examined both the witnesses examined by the petitioner. The petitioner had also filed affidavit of evidence of Mr. J.S. Tiger and though he was present before the learned arbitrator, the petitioner made a statement that he did not wish to lead evidence of Mr. J.S. Tiger. The learned arbitrator therefore adjourned the matter for examination of Mr. Anil Mathur, the handwriting expert as per the request of the petitioner's Advocate. On 16th

March 2006, the Advocate for the petitioner informed the learned arbitrator that the petitioner would obtain and file the affidavit of the said handwriting expert or before 10th April 2006 and would keep the said witness present on the next date of hearing for cross-examination. The petitioner also made a statement that if he failed to file affidavit of Mr. Mathur and produce him for cross-examination, then evidence of the petitioner shall stand closed. The learned arbitrator accordingly fixed time to produce Mr. Mathur, the handwriting expert on 20th April 2006. On 20th April 2006, as the petitioner failed to file affidavit of Mr. Mathur and to produce him before the arbitrator, the learned arbitrator granted further time to file the said affidavit and the matter was adjourned to 25th April 2006. On 25th April 2006, the petitioner informed the learned arbitrator as well as the respondents that Mr. Mathur was not willing to come for evidence and therefore, petitioner was closing his evidence. On the same day, petitioner made an application u/s 26 before the learned arbitrator. After hearing the arguments of both the parties on 2nd May 2006, the learned arbitrator dismissed the said application filed u/s 26. The petitioner challenged the said order by filing arbitration petition (367/07) u/s 14 of the Act on the ground that the learned arbitrator was biased and on the ground of alleged violation of principles of natural justice. By an order dated 8th October 2007, this Court dismissed the said arbitration petition (367/07). This Court recorded that it was an admitted position that parties had led evidence on all issues before the learned arbitrator and thereafter the submission of the respondents on the issues had been heard by the learned arbitrator. The petitioner did not challenge the said observations made by this Court in Order dated 8th October 2007 in SLP filed by the petitioner.

26. Question that arises for consideration of this Court is whether the learned arbitrator has violated the principles of natural justice or has not rendered full opportunity to the petitioner by allowing to lead additional evidence at the stage of closure of oral arguments of the respondents for the purpose of proving his case that the agreements relied upon by the respondents were forged and fabricated.

27. Perusal of the record in this regard indicates that the petitioner himself had relied upon the same agreements which the respondents were relying upon in various proceedings filed by the petitioner himself such as (a) Affidavit dated 27th November 2000 in Misc. Application No. 69 of 2000 in MPID Special Case No. 7 of 2000, (b) Criminal Appeal No. 74 of 2001, (c) Writ Petition No. 3661 of 2001, (d) Affidavit dated 26th July 2001 M.A. No. 129 of 2001 in Special Case No. 7 of 2000, (e) Affidavit dated 6th November 2001 filed in Writ Petition Nos. 3661 of 2001 and 3662 of 2001 before the learned Special Judge in MPID Special Case No. 7 of 2000, Criminal Appeal No. 76 of 2001 and Arbitration Application No. 252 of 2002. The petitioner also did not dispute the genuineness of the agreement in the proceedings before the learned Special Judge in MPID Spl. Case No. 7 of 2000. It is not in dispute that pursuant to order dated 16th January 2001 passed in criminal proceedings, the original agreements were handed over to the Investigating Officer by the respondents when the petitioner was

personally present. These facts are admitted by the petitioner through his witness in his cross-examination. The petitioner's witness also admitted that no steps were taken by him after coming to know of alleged fraud and forgery of the joint venture agreement. The petitioner also did not withdraw his admission to the execution and genuineness of agreements made in writ petition (3661/01) which was then pending in this Court. Before the learned arbitrator, the respondents had produced a certified copy of the agreement signed by both the parties and also various copies of the said agreements filed by the parties before different Courts including this court in various litigations. The petitioner did not dispute the contents of certified copy of the agreements and other copies produced by the respondents before the learned arbitrator which copies were admittedly relied upon by both the parties in different proceedings. The learned arbitrator considered these facts and observed that Mr. Y.R. Singh, a common lawyer had drafted the criminal appeal and civil writ petition in which reliance was placed on the same agreements, did not raise any objection on behalf of the petitioner. Even this Court relying upon the same agreements and permitted both the parties to arrive at an arrangement and complete the incomplete building. Order dated 16th January, 2001, making the attachment absolute, passed by the Competent Authority in respect of the properties was challenged by both the parties by filing separate criminal appeals on the basis of copy of the very same agreement relied upon by the respondents in the proceedings before the learned arbitrator. Though the petitioner also challenged the order dated 16th January 2001 by filing separate writ petition (3661-01), did not deny the existence or contents of the agreement which was annexed to the said petition.

28. The learned arbitrator has rendered a finding that it was difficult to believe that the petitioner who is a law graduate and claims to be practicing lawyer had no occasion to go through the contents of document relied upon by him and filed in various proceedings or that he was not aware of the agreement which according to him, was forged by the respondents. After considering all the documents and submissions made by both the parties and oral evidence led, the arbitral tribunal rendered a finding that he had jurisdiction to entertain the dispute based on a binding arbitration clause that was arrived at his perusal in a certified copy of the original agreement issued by the Special Court. The learned arbitrator also rendered a finding of fact that there was nothing on record to show that there was no agreement between the parties which contained the arbitration clause. The learned arbitrator recorded a statement made by the petitioner through his Advocate Mr. Trivedi that the petitioner did not dispute the correctness of the certified copy furnished by the respondents to the learned arbitrator. The learned arbitrator perused the records and rendered a finding that petitioner had clearly stated that he had signed four agreements in Delhi in presence of various witnesses, petitioner however did not enter the witness box.

29. On the issue of examining the document by an Expert or by examining a handwriting expert, the learned arbitrator has narrated the events as how the matter was proceeded by the parties on this issue. Though the petitioner, at one

stage had proposed to examine Mr. Mathur, the handwriting expert and was given an opportunity to examine the said handwriting expert, the petitioner made a statement that the said witness was not willing to offer himself as witness and the petitioner therefore, closed his evidence.

30. The learned arbitrator has rendered a finding that though enough opportunity was given to the petitioner to lead evidence of handwriting expert to establish his case that the agreement relied upon by the respondents was forged document, petitioner has failed to do so. It has been held that at a belated stage, the petitioner sought permission to produce handwriting expert and since the evidence was long closed and final arguments on behalf of the respondents were almost completed by that time, such permission was not granted to the petitioner. After perusal of various documents on record and rival submissions made on behalf of the parties, the learned arbitrator rendered a finding that the signature appearing in the copy of the agreement relied upon by the respondents, is that of the petitioner. It is held that the petitioner had led no evidence to prove his allegation of forgery and the contention of the petitioner that the signature was forged by the respondents was not tenable. The learned arbitrator held that the petitioner had failed to establish that the respondents had forged and fabricated the said agreement. It is held that the said agreement is valid and subsisting and the petitioner was bound by the terms of the said agreement, a certified copy of which was produced and relied by the respondents.

31. Perusal of record also indicates that evidence of the petitioner was closed on 22nd June 2006. After perusal of petition filed u/s 27 of the Act, the respondents commenced their submissions and continued on 23rd June 2006, 24th June 2006, 3rd July 2006, 4th July 2006 and substantially completed on 17th January 2007. Application was made by the petitioner on 5th March 2007 inter alia praying for issuance of writ of summons to the Investigating Officer and handwriting expert Mr. Mishra. On 6th March 2007, the petitioner made another application for modification to application made on 5th March 2007 seeking approval u/s 27 of the Act in favour of the petitioner to apply before this Court to cause to be produced the forged agreements from the Investigating Officer appointed by the learned Special Court under MPID Act. On 13th March 2007, it was made clear by the respondents that the petitioner had given up issue of report of Mr. V.C. Mishra, handwriting expert, which was not denied or disputed by the petitioner. The learned arbitrator passed an order dated 24th July 2007 on the said applications dated 5th March 2007 and 6th March 2007 and held that the issue of witness summons was already decided by the arbitral tribunal earlier. The petitioner challenged the said order by filing arbitration petition (367/07) u/s 14 of the Act in this Court. In the said petition, petitioner had raised a ground that the learned arbitrator, by not taking report of Mr. V.C. Mishra and by rejecting application u/s 27, violated the principles of natural justice and was biased. The petitioner did not disclose its waiver of not calling Mr. V.C. Mishra as his witness. The said petition was dismissed by this Court by passing detail order and Judgment on 8th October 2007.

32. In my view, there is no substance in the contention of Mr. Anturkar, the learned counsel appearing for the petitioner that learned arbitrator ought to have taken into consideration Mr. Mishra's report, or that the same was alleged to be on record by virtue of Order 26 Rule 10 of the CPC and was part and parcel of record and proceedings. It is not in dispute that the learned arbitrator did not appoint Mr. Mathur or Mr. Mishra as Commissioner to examine the disputed signature. Perusal of Order 26 Rule 10 of the CPC indicates that Court is empowered to appoint Commissioner for carrying out local investigation. The scheme of Order 26 Rule 10 of CPC indicates that such Commissioner appointed by the Court or carrying out investigation, collects the evidence on behalf of the Court and the report of such Commissioner has to be read as evidence in such proceedings as per the provisions of Code of Civil Procedure. In my view, provisions of Order 26 Rule 10 of CPC or principles thereof, cannot be extended to the alleged report relied upon by the petitioner, the same being a disputed document not having been proved by the petitioner by examining proper witness in that behalf in spite of an opportunity being available to the petitioner to examine Mr. Mishra at the relevant and appropriate time. Petitioner himself did not enter the witness box. He was the best witness to depose that his signature was alleged to have been forged by the respondents. In my view, though arbitrator is not bound by the provisions of CPC or Evidence Act, principles of Evidence Act and CPC are applicable even to arbitration proceedings. A document which is disputed by a party and if not proved, cannot be considered even by the arbitrator to be on record or as a piece of evidence. Taking into consideration an unproved document by an arbitrator, on the contrary would be in violation of principles of natural justice. In my view, arbitrator was not bound to refer the alleged document to an expert witness suo moto.

33. In my view, in view of the order passed by the learned arbitrator on 2nd May 2006 rejecting the application u/s 26, made by the petitioner, which order was upheld by this Court in arbitration proceedings (367/07), no grievance can be made by the petitioner in respect of the said order dated 2nd May 2006 passed by the learned arbitrator.

34. Mr. Shrihari Aney, the learned senior counsel appearing for respondents is right in his submission that the learned Metropolitan Magistrate has already rejected the report of handwriting expert Mr. V.C. Mishra by placing reliance upon the said document forming part of compilation of documents of the petitioner. The said rejection of Mr. Mishra's report was thereafter confirmed by the Sessions Court and also by this Court.

35. The expression "full opportunity to present his case" used in Section 18 of the Act, would, in my view, mean full opportunity to be given to both the parties before the learned arbitrator. Both the parties were already allowed to lead its evidence by the learned arbitrator. Both had led oral as well as documentary evidence. After the petitioner closed his evidence, respondents had commenced and almost completed their arguments before the learned arbitrator. The

respondents had no opportunity to lead any further evidence as the evidence of both the parties was closed. The learned arbitrator, therefore, was right, in my view, in rejecting the application belatedly made by the petitioner for permitting the petitioner to apply for issuance of writ of summons to this Court to Mr. Mishra or to refer the document for examination of a handwriting expert. In my view, under the guise of full opportunity, a party cannot be permitted to delay and/or frustrate the arbitration proceedings by one or the other means.

36. The record indicates that the petitioner was in habit of delaying arbitration proceedings though the learned arbitrator had shown all indulgence to the petitioner and had granted full opportunity to present his case including permission to lead oral evidence. In my view, no party has an unfettered right to adduce evidence and/or make oral submissions at any stage of the proceedings as canvassed by Mr. Anturkar, the learned counsel appearing on behalf of the petitioner. u/s 24(1) of the Act, arbitrator is empowered to decide whether to hold his hearings for the presentation of evidence or for oral arguments or whether proceedings shall be conducted on the basis of documents and other material unless otherwise agreed by the parties. In this case, both the parties were given opportunity to lead its evidence and to make oral arguments. In so far as opportunity to lead his evidence is concerned, the petitioner had examined two witnesses and had closed his evidence. The petitioner had filed petition in this Court for issuance of witness summons against the handwriting expert and withdrew the said petition. The expression used in proviso to Section 24(1) of the Act that the arbitrator shall hold oral hearing at appropriate stage of the proceedings on a request by a party, unless the parties have agreed that no oral hearing shall be held, would not mean that a party can apply for oral hearing which would include leading of oral evidence at any stage as desired by that party. In my view, making an application for leading oral evidence or for permission for issuance of writ of summons at the stage of conclusion of final arguments by the respondents herein, would not be an appropriate stage of the proceedings when such application could be made by the petitioner. In my view, application was made not at appropriate stage but was made at inappropriate stage and time with a view to further delay the proceedings which was pending for quite some time. The learned arbitrator therefore, was justified, in my view, to reject the said application made by the petitioner at belated stage. If the petitioner would have been granted such opportunity, petitioner would have cured the lacuna in his evidence already led which would have been pointed out in the oral arguments of the respondents herein which had commenced after conclusion of oral evidence and had almost completed. The learned arbitrator has to be fair to both the parties and thus to prevent any injustice to the respondents, in my view, the learned arbitrator was justified in rejecting the said application made at belated stage. In my view, Section 19(3) and (4) has to be read with Section 18 and with proviso to Section 24 of the Act on the aspect of procedure, hearing and compliance of natural justice by an arbitrator.

37. Question then arises for consideration of this Court is whether by rejecting

application made by the petitioner seeking permission to apply in this Court for issuance of writ of summons or for referring the disputed document to handwriting expert at belated stage, would be at all in violation of principles of natural justice and no prejudice would have been caused to the petitioner by rejecting his application to lead oral evidence. The petitioner wanted to apply for permission to file proceedings in this Court for issuance of witness summons or to refer the disputed document to handwriting expert at belated stage for the purpose of proving his allegation that the documents relied upon by the respondents were forged and fabricated documents. Though an opportunity was given by the learned arbitrator earlier, petitioner did not examine the Expert witness, though his affidavit was filed. Perusal of record indicates that the petitioner himself had relied upon the same agreements in various proceedings filed by him and/or did not deny existence and contents of the said agreements in criminal proceedings. The petitioner also admitted the correctness of certified copy produced by the respondents before the learned arbitrator. If both the parties have relied upon the same documents in various proceedings without raising any dispute in respect of the existence and/or contents thereof, and not having disputed the correctness of the certified copy thereof in the proceedings before the learned arbitrator, in my view, the application made by the petitioner for referring the said disputed document to handwriting expert or to get the writ of summons issued by this Court at belated stage was nothing but one more attempt to delay and frustrate the outcome of arbitration proceedings which was pending for quite some time. The petitioner having admitted the agreements relied upon and annexed to the proceedings in several other proceedings between the same parties, petitioner in my view, could not have proved any fact contrary to one that was already admitted by him in series of proceedings. The learned arbitrator thus, in my view was right in rejecting the said application which was made at belated stage. No prejudice thus, could be caused to the petitioner by rejection of such application by the learned arbitrator which application, in my view, was totally unwarranted and mischievous. As no prejudice would have been caused by rejecting such application, such order, in my view, would not amount to be in violation of principles of natural justice.

38. The learned arbitrator has rendered a finding of fact after considering all the documents and after giving full opportunity to both the parties and such findings are not perverse and therefore, cannot be interfered with by this Court u/s 34 of the Act. I am not inclined to accept the submission made by Mr. Anturkar, the learned counsel appearing for the petitioner that the learned arbitrator did not give full opportunity to the petitioner. I am also not inclined to accept submission that if a Civil Court could not have rejected an application in these facts to lead evidence at any stage of proceedings, even arbitrator could not have rejected such application.

39. On conjoint reading of the provisions of Section 18, 19 and 24 of the Act, it is clear that scheme of the Act in so far as powers of the arbitrator is concerned, the provisions of CPC which empowers the Court to follow the procedure

provided therein are slightly different. In my view, even a Civil Court, in these facts, would not have granted an opportunity to lead oral evidence once evidence was closed by both the parties and arguments of the plaintiff were substantially completed.

40. The next submission of Mr. Anturkar, learned counsel appearing for the petitioner is that various observations have been made by the learned arbitrator against the conduct of the petitioner and also on merits, which observations would indicate that the learned arbitrator was totally biased and his mind was totally prejudiced against the petitioner, in view of the petitioner's filing petition u/s 14 of the Act in this Court and for other reasons. The learned counsel submits that after rejecting the application of the petitioner to examine Mr. Mishra, learned arbitrator passed an award in which, he has stated with prejudiced mind that such request was made earlier and was rejected and such an order was never passed. It is submitted that the learned arbitrator has used the forum of passing arbitration award to file his written statement on the possible ground of bias being raised in Section 34 proceedings. It is submitted that though the learned arbitrator was required to decide the matter only on merits, however while delivering the final award, he was not ready to forget the allegations made against him by the petitioner and recorded the said allegations on record in the impugned award, which indicates his biased and prejudiced mind against the petitioner which vitiates the entire award.

41. Mr. Shrihari Aney, the learned senior counsel appearing on behalf of the respondents submits that there is no specific ground of bias raised in arbitration petition by the petitioner against the learned arbitrator. It is submitted that no application was filed u/s 12 and 13 of the Act within time as contemplated under the said provisions. Allegation of bias was raised for the first time by the petitioner in his petition u/s 14 of the Act, which petition was dismissed by this Court. Application u/s 12 of the Act was made on 18th September 2008 which was after filing written arguments and making his full submissions before the learned arbitrator. It is submitted that application u/s 12 and the allegations made therein, were barred by limitation prescribed u/s 13(2) of the said Act or in any event u/s 4 of the Act. The learned senior counsel submits that on various occasions, the petitioner after making such frivolous allegations against the learned arbitration has withdrawn the same as can be demonstrated from the Minutes of Meeting and the impugned award. The learned senior counsel submits that granting reliefs in favour of the respondents on merits of the matter cannot amount to bias on the part of the learned arbitrator. The petitioner has not advanced any arguments challenging the impugned award on merits. The learned senior counsel submits that the allegations of bias imputed made by the petitioner against the learned arbitrator are totally baseless, untenable mischievous.

42. As far as allegations of bias made by the petitioner against the learned arbitrator are concerned, except a bald statement in the ground raised by the

petitioner, petitioner has not substantiated the said allegation though the matter was adjourned by this Court at the request of the petitioner to seek amendment to the petition and liberty was granted to amend the petition, petitioner did not amend the petition. The learned arbitrator had shown all indulgence to both the parties and more indulgence to the petitioner by granting various adjournments and granted full opportunity. During the course of hearing before the learned arbitrator, the petitioner, through his Advocate, had withdrawn the allegations of bias. Allegations of bias made by the petitioner in their petition u/s 14 of the Act came to be rejected by this Court. The Supreme Court did not interfere with the said order and merely directed the learned arbitrator to decide application u/s 16 made by the petitioner. Petitioner did not make any application within time prescribed u/s 13(2) of the Act. The petitioner made belated application u/s 12 by which the petitioner repeated his allegations made in petition filed u/s 14 which were already rejected by this Court. The learned arbitrator, therefore was right in rejecting the application made by the petitioner u/s 12 read with 13 of the Act. In my view, there is no substance in the allegation of the petitioner that the learned arbitrator was biased against the petitioner for the reasons alleged therein or otherwise. In my view, no bias can be imputed against the learned arbitrator if he has allowed the claim of the respondents on merits. As the petitioner has not made any submission on merits of the award and thus, those issues were not replied by the respondents. This Court thus, has not dealt with those issues. The petitioner did not make any other submissions apart from what is recorded in foregoing paragraphs of the petition. In my view, there is no merit in any of the submissions made by the petitioner and the petitions thus, deserve to be rejected. I, therefore pass the following order.

Arbitration petitions are dismissed. No order as to costs.