
(2015) 07 BOM CK 0127

In the Bombay High Court

Case No : Arbitration Petition No. 423 of 2012

Rajesh Pravinchanda Rajyagor

APPELLANT

Vs

Nitin Harjivandas Rajyagor

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 13, 13(2), 16, 19, 23

Citation : (2015) 07 BOM CK 0127

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

Bench : Single Bench

Advocate : Simil Purohit, Farhan Khan and Anand Gandhi, for the Appellant;
Sonal F., Jai Chinai, Senior Advocate and Filji Frederick instructed by FF and Associates, Advocates for the Respondent

Judgement

R.D. Dhanuka, J—By this petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 (for short the said "Arbitration Act"), the petitioner seeks to impugn the arbitral award dated 9th May 2011 thereby allowing some of the claims made by the respondent. Some of the relevant facts for the purpose of deciding this petition are as under:-

2. The petitioner is the grand son of late Harjivandas Rajyagor. The family of late Harjivandas Rajyagor consists of his wife late Kankuben H. Rajyagor and his two sons viz (i) late Pravin and his wife Bhavna and (ii) Nitinkumar H. Rajyagor and his wife Rekha and three married daughters and also grand children. The family of late Harjivandas Rajyagor owned various immovable properties. The dispute arose between the petitioner and the respondent.

3. On 21st April 2004, the petitioner and the respondent entered into an "Agreement to refer disputes to Arbitration". Prior to the date of said agreement, the parties had come to an understanding and settlement which was duly reduced in writing on 17th March 1999 and signed by both the parties and witnessed by the intervenors namely Mr. Nathalal K. Rajyagor and Mr. Atulkumar.

4. In the said agreement dated 21st April 2004 entered into between the parties, it was recited that after 17th March 1999 while implementing the agreement, certain new issues were raised by both the parties and the matter was handed over to original intervenors along with Mr. Rasmikant N. Shah (C.A.), Mr. Balwantbhai Mehta and Mr. Pravinbhai Bhat to finally resolve all the pending issues. The said intervenors gave their final verdict on 6th April 2001 in writing. It was recited in the said agreement that till the date of execution of the said agreement, certain issues had remained unresolved and hence on whatever issues an agreement was earlier reached between both the parties, the same could not be implemented. It was recited that the parties referred 17 issues which issues the parties had resolved and based on which, there was a final mutual agreement and there was no dispute whatsoever on those issues.

5. The parties agreed that they would not raise anything out of the same in future and implementation would be done in due course. It was also recorded that the parties had made certain claims and counter claims in respect of unresolved issues as well as in respect of certain issues resolved earlier. The parties agreed to refer the said dispute to the sole arbitration of Mr. Chandrakant N. Shah, C.A. and assured that all possible help as may be required by the said sole arbitrator would be extended to him. Both the parties agreed to hand over the issues which were not resolved as well as pending, requiring consideration of the learned arbitrator on a separate paper duly signed by each of them.

6. In the said agreement, it was agreed that the arbitrator shall hear both the parties and such of their relatives as the arbitrator in his sole discretion deem fit and their witnesses, intervenors and look into such documents, records and evidences as they may produce and shall give his award within approximately 1 1/2 months. It was also provided that in case either party fails to appear before the learned arbitrator after reasonable notice, he shall have power to proceed ex parte.

7. Pursuant to the said agreement dated 21st April 2004, the petitioner submitted a list of various issues before the learned arbitrator which was required to be resolved over and above the issues mentioned in the earlier documents. In the said documents, the petitioner referred 9 issues which were already mentioned in the earlier documents and referred other 18 issues for determination. The respondent also submitted a list of various issues for consideration of the learned arbitrator.

8. Several meetings were held by the learned arbitrator which were attended by the petitioner and the respondent, some time with their respective advocates and some time in their absence. None of the parties filed any statement of claim before the learned arbitrator in respect of their respective claims. There was no written statement filed by any of the parties.

9. It is the case of the respondent that the learned arbitrator gave ample opportunities to both the parties for production of evidence and to file written

submissions by his letters dated 12th September 2005, 23rd January 2008, 27th March 2008 and 22nd April 2008. The petitioner, however, did not avail of such opportunities and did not file any written submission. On 20th September 2005, the petitioner through his advocate informed the learned arbitrator that the petitioner had produced all the documents, evidences and records to support his claims before 18th September 2005.

10. In the month of March 2006, the petitioner inquired with the learned arbitrator as to whether he would take the issue of Rs. 12.51 lacs as demanded by the respondent or the issue in respect of flat first. In the meeting held on 6th March 2006, the learned arbitrator indicated that he would take the issue of Rs. 12.51 lacs raised by the respondent first in the next meeting. On 17th April 2006, the petitioner filed an application before the learned arbitrator to follow the procedure under the provisions of the Arbitration and Conciliation Act, 1996 and to fix time bound schedule to complete the entire proceedings. It was alleged in the said application that the learned arbitrator with the assistance of the intervenors was required to settle the dispute between the parties and to pass an award after looking into the documents, records and evidences as produced and to give the award within a period of 1 1/2 months from the date of the said agreement. The petitioner, however, alleged that there was no systematic procedure followed by the learned arbitrator in settling the dispute between the parties. The petitioner requested the learned arbitrator to fix time bound schedule to complete the entire proceedings.

11. On 19th June 2007, the petitioner requested the learned arbitrator to fix a date stating that he was very much interested in disposal of the arbitral proceedings and had made from time to time possible efforts for early disposal of the same. The petitioner requested the learned arbitrator to fix early convenient date for next meeting. On 20th June 2007, the learned arbitrator asked the petitioner to pay his fees. The petitioner paid the fees of the learned arbitrator under protest. On 3rd September 2007, the learned arbitrator sent a notice to both the parties fixing a meeting to clarify the issue about the payment of fees as the petitioner had paid the fees of the learned arbitrator under protest. On 14th August 2007, the petitioner sent a fax to the learned arbitrator regarding claims of godown.

12. On 6th November 2007, the learned arbitrator visited the flat which was in occupation of the petitioner on the request of the respondent. It is the case of the petitioner that the said visit of the learned arbitrator along with the respondent in the said flat was without any notice to the petitioner and was with a view to help the respondent. The petitioner by his letter dated 26th November 2007 to the learned arbitrator alleged that the said visit of the learned arbitrator showed bias on his part. The learned arbitrator by his letter dated 30th November 2007 refuted the allegation of bias made by the petitioner.

13. On 6th December 2007, the petitioner addressed a letter to the learned arbitrator stating that since he was busy, he would reply to the letter dated 30th

November 2007 within one week. The petitioner, however, did not send any reply to the said letter dated 30th November 2007.

14. On 14th February 2008, the petitioner filed an application under Section 13 before the learned arbitrator. On 19th March 2008, the petitioner through his advocate addressed a letter to the learned arbitrator alleging that he was delaying the matter. On 27th March 2008, the learned arbitrator passed an order rejecting the allegation of bias made by the petitioner against the learned arbitrator. On 2nd May 2008, the petitioner addressed a letter to the learned arbitrator stating that since the learned arbitrator had not done the needful as requested by his attorney, the petitioner was unable to participate in the arbitration proceedings.

15. It is the case of the respondent that in the month of March 2010, the parties went to the native place in Gujarat and divided the Silverware. The respondent had informed about the same to the learned arbitrator.

16. On 21st March 2011, the respondent addressed a letter to the learned arbitrator informing that negotiations were going on between the parties and requesting him not to declare the award immediately. On 28th March 2011, the petitioner addressed a letter to the learned arbitrator alleging that the learned arbitrator had not called for any hearing though demanded by the petitioner. On 14th April 2011, the learned arbitrator denied the said allegation made by the petitioner and expressed surprise to the contents of the said letter dated 28th March 2011.

17. On 21st April 2011, the petitioner addressed a letter to the learned arbitrator once again requesting him to proceed with the hearing of the matter. Learned arbitrator made an award on 9th May 2011 which is impugned by the petitioner in this petition.

18. Mr. Purohit, learned counsel for the petitioner submits that Item Nos. 1 to 17 which were described in the arbitration agreement were already resolved and only the same had to be implemented. Such resolved issues were not to be reopened by the parties or the learned arbitrator. He submits that by deciding some of those resolved issues by the learned arbitrator, he has decided the issue outside the scope of the arbitration agreement dated 21st April 2004 and has acted beyond his jurisdiction. In support of his submission, learned counsel invited my attention to the arbitration agreement and the letters addressed by both the parties to the learned arbitrator referring to various issues and also copy of the impugned award.

19. It is submitted by the learned counsel for the petitioner that settlement dated 17th March 1999 and 6th April 2001 were superseded by the arbitration agreement dated 21st April 2004 and thus the disputes which were already settled under the said two agreements could not be reopened by the learned arbitrator.

20. It is submitted by the learned counsel that neither any Statement of Claim was filed by the respondent nor any other pleadings as required under the provisions of Section 23 of the Arbitration Act was filed by any of the parties before the learned arbitrator. He did not follow the prescribed procedure under the provisions of the said Arbitration Act. Issues were not framed by the learned arbitrator. No evidence was led by any of the parties. No opportunity was given to the petitioner to cross-examine the respondent. He submits that though the petitioner had filed an application on 17th April 2006 before the learned arbitrator to prescribe a procedure under the provisions of the Arbitration and Conciliation Act, 1996 and follow the same, the said application is not decided by the learned arbitrator. He submits that the entire award is in violation of the provisions under Section 23 of the Arbitration and Conciliation Act, 1996 and is in violation of principles of natural justice. He submits that several documents are relied upon by the learned arbitrator produced by the respondent which were not even proved by the respondent before the learned arbitrator. It is submitted that the learned arbitrator did not give personal or oral hearing to the petitioner though requested by the petitioner himself or through his advocate from time to time.

21. Learned counsel for the petitioner submits that during the period between 2008 till declaration of award, no meetings were held by the learned arbitrator, that is almost for a period of three years. Learned arbitrator did not give any explanation in the impugned award as to why there was such gross delay on his part in rendering the award.

22. It is submitted by the learned counsel for the petitioner that the learned arbitrator visited the flat of the petitioner on the complaint of the respondent without any notice given to the petitioner with a view to collect the evidence. Learned arbitrator had acted with bias against the petitioner and in favour of the respondent. It is submitted that the learned arbitrator was exchanging correspondence with the respondent without furnishing copy thereof to the petitioner.

23. It is submitted by the learned counsel that the learned arbitrator had met the earlier intervenors in absence of the petitioner and collected the evidence and based on such meetings with such intervenors had placed reliance on such information in the impugned award. The impugned award thus is in violation of principles of natural justice.

24. It is submitted by the learned counsel for the petitioner that the learned arbitrator did not decide the issue of distribution of Simar property. No direction was given in respect of the said property in the impugned award and the award is vague in respect of the said issue. Similarly, the learned arbitrator also did not decide the issue of ownership of brand "Kemphasol" though the same was raised by the respondent.

25. In so far as flat No. 14 in Garden View Co-operative Housing Society Limited

is concerned, it is submitted by the petitioner that the learned arbitrator could not have decided the said issue. Separate proceedings in that regard were pending before the Co-operative Court. He submits that though the learned arbitrator agreed not to decide the said issue, he decided the said issue in respect of the said flat. He submits that dispute in respect of the said flat was already resolved as per clause 11 of the arbitration agreement dated 21st April 2004 and the issue was only in respect of implementation of the said settlement arrived at.

26. It is submitted by the learned counsel for the petitioner that the learned arbitrator had decided the issue of flat No. 14 in Garden View Society as per the Will of Mrs. Kankuben with a view to favour the respondent. He submits that the said alleged Will of Mrs. Kankuben was neither produced nor discussed in the arbitration proceedings. Learned arbitrator thus could not have relied upon the said alleged Will for the purpose of deciding the issue of the said flat in Garden View Society.

27. Learned counsel for the petitioner submits that though the payment of Rs. 12.51 lacs was not the subject matter of the arbitration agreement dated 21st April 2004, the learned arbitrator has not only decided the said claim but has allowed the said claim with compound interest @ 18% p.a. from 1st April 1999 to 31st March 2011.

28. Learned counsel for the petitioner then submits that though the ownership of godown at Popatwadi which came to the share of the petitioner and valued at Rs. 11 lacs, the learned arbitrator decided the said issue at the instance of the respondent and acted without jurisdiction.

29. In so far as the sale proceeds of stocks is concerned, it is submitted by the petitioner that the learned arbitrator had granted specific performance in respect of the goods which were freely available in the market by directing the petitioner to purchase the goods from the open market.

30. In so far as the direction of the learned arbitrator to share the expenses is concerned, it is submitted by the learned counsel for the petitioner that the said issue was already resolved between the parties and could not have been reopened by the learned arbitrator. The award in respect of the said claim is without jurisdiction.

31. It is submitted by the learned counsel that the difference in the value of the cars was also resolved between the parties and the learned arbitrator could not have been reopened the said issue. He has acted without jurisdiction and has decided the said claim.

32. It is submitted by the learned counsel for the petitioner that the learned arbitrator had directed the petitioner to pay Rs. 3.06 lacs to the respondent in respect of the alleged liability of M/s. Lancaster though the claim of the said party was time barred as far back as 2004 when the arbitration agreement was

executed. The said issue was also already resolved by and between the parties and could not have been reopened by the learned arbitrator.

33. In so far as the amount of Rs. 4.37 lacs directed by the learned arbitrator to be paid by the petitioner to the respondent towards "Acros Account" is concerned, it is submitted that the said M/s. Acros which was a creditor of B.R. Corporation was solely controlled by the respondent. Even the said amount is directed to be paid with compound interest @ 18% p.a. from 1st April 1999 to 31st March 2011.

34. It is submitted by the learned counsel for the petitioner that the learned arbitrator has directed the petitioner to pay a sum of Rs. 50,000/- to the respondent as per alleged Will of late Pravinbhai along with compound interest @ 18% p.a. from 1st April 1989 to 31st April 2011. Learned arbitrator could not have implemented the said alleged Will and has acted without jurisdiction.

35. It is submitted by the learned counsel that the learned arbitrator has directed the petitioner to pay a sum of Rs. 32,000/- with compound interest under the B.P. Joshi Loan Account which was shown as credit in the balance sheet of Nitin Kumar and Co. No such amount could have been awarded by the petitioner and that also with compound interest.

36. It is submitted by the petitioner that though none of the parties had raised an issue about payment of brokerage of godown for inclusion of name of the mother of the petitioner in Maroo Bhavan Office, learned arbitrator has decided the said issue and acted without jurisdiction.

37. It is submitted by the learned counsel that the learned arbitrator had awarded compound interest @ 18% p.a. and that also from the year 1999. There is no provision in the agreement for payment of interest at the compound rate. He submits that in any event, the interest could not have been awarded @ 18% p.a. and that also from the year 1999. He submits that substantial part of the claim awarded in favour of the respondent is towards interest @ 18% p.a. from the year 1999 till the date of payment which is ex facie illegal and without application of mind.

38. In reply Ms. Sonal F. learned counsel for the respondent submits that there was no concluded contract between the parties insofar as item Nos. 1 to 17 of the arbitration agreement is concerned. She submits that the petitioner himself had raised various issues out of such item Nos. 1 to 17 before the learned arbitrator for adjudication. Whether there was an agreement in respect of such disputes raised by the petitioner as well as by the respondent was itself a dispute before the learned arbitrator. Learned counsel placed reliance on the petitioner's unresolved issues at Exhibit-C of the petition and would submit that such issue formed the scope of reference and were within the jurisdiction of the learned arbitrator. She submits that the list of unresolved issues given by the petitioner contained several alleged resolved issues as they were in dispute. In support of this submission, learned counsel invited my attention to some of the issues

raised by the petitioner himself before the learned arbitrator which issues were forming part of those 1 to 17 items on which the petitioner had applied for adjudication before the learned arbitrator.

39. Learned counsel for the respondent submits that the petitioner had asked for 33% deduction alleging the difference of values of offices and godowns in his list of unresolved issues. The petitioner had also sought to keep Esteem car valued at Rs. 2 lacs and agreed to pay Rs. 80,000/- less Rs. 22,000/- to the respondent being the difference between the value of the two cars. It is submitted that the learned arbitrator has rightly recorded the statement made by the learned advocate of the petitioner that the resolved matters also were to be discussed. No ground is raised by the petitioner in the arbitration petition alleging that such submission was not made by the petitioner or his advocate and was wrongly recorded by the learned arbitrator. She submits that it was one of the contention raised by the petitioner's advocate before the learned arbitrator that even the resolved issues were to be discussed in the meeting held on 10th October, 2005. She submits that the petitioner had also raised the issue regarding common stock before the learned arbitrator.

40. Learned counsel also placed reliance on paragraph 1.34 of the impugned award and would submit that it was mutually decided that the issue of immovable properties, flat, office, godowns etc. would be finalized first. No such ground is raised by the petitioner denying such decision arrived at mutually by the parties before the learned arbitrator. She submits that the petitioner himself had initiated discussion on the issue of immovable properties on 14th October, 2005. It is submitted that it is not pleaded by the petitioner in the petition that item Nos. 1 to 17 in the arbitration agreement dated 21st April, 2004 were only to be implemented and were already resolved. She submits that even in ground (ii) it is admitted by the petitioner that what the parties had given at Exhibit-C of the petition were unresolved issues.

41. Learned counsel for the respondent submits that the petitioner did not raise any issue under section 16 of the Arbitration and Conciliation Act of jurisdiction immediately after various claims which according to the petitioner were beyond the scope of the authority of the learned arbitrator were raised. There was thus waiver on the part of the petitioner and such issues could not be raised subsequently or in this petition. It is submitted by the learned counsel that even the valuation of the godowns had been challenged by the petitioner which was one of the item out of item Nos. 1 to 17 of the arbitration agreement which would indicate that even the said issue was not a resolved issue.

42. Learned counsel for the respondent submits that the petitioner has raised one of the grievance in the arbitration petition that the learned arbitrator did not consider the immovable properties in possession of the respondent which were allegedly of Rs. 24 lacs more in value than the property in possession of the petitioner. It is submitted that the issue of valuation of the properties and the claim for the difference in such valuation was raised by the petitioner himself and

the same has been decided by the learned arbitrator. No such ground thus can be raised by the petitioner of jurisdiction insofar as valuation of the property is concerned. Learned counsel placed reliance on the minutes of various meetings and would submit that such meetings would clearly indicate that the parties were heard on the issue of godowns and the flat by the learned arbitrator from time to time.

43. On the issue raised by the petitioner that the settlement dated 17th March, 2009 and 6th April, 2001 were superseded by arbitration agreement dated 21st April, 2004, it is submitted by the learned counsel that the petitioner himself had requested the learned arbitrator to find out what was agreed before the earlier intervenors. The learned arbitrator has recorded such statement in the last paragraph at page 39 of the impugned award. She submits that the arbitration agreement dated 21st April, 2004 was a continuation of the settlements dated 17th March, 1999 and 6th April, 2001.

44. Insofar as issue that the parties not having filed any pleadings or the learned arbitrator not having followed the prescribed procedure under the provisions of Arbitration Act is concerned, it is submitted by the learned counsel for the respondent that the learned arbitrator is not bound by the provisions of the Code of Civil Procedure and the Evidence Act. There is no straight jacket procedure to be followed in the arbitration proceedings. She submits that if there is no agreement between the parties to agree on the procedure to be followed by the arbitral tribunal, the arbitral tribunal may conduct the proceedings in the manner it considers appropriate. In support of this submission reliance is placed on section 19 of the Arbitration Act. She submits that the learned arbitrator has followed the principles of natural justice.

45. It is submitted that since the requirement of filing of statement of claim and written statement is subject to the contract to the contrary under section 23(1), parties having agreed to handover only the issues/matters not resolved as well as binding for consideration before the learned arbitrator, the parties had agreed to follow this procedure before the learned arbitrator. She submits that in any event the petitioner did not raise this issue before the learned arbitrator in more than 15 meetings and thus such issues even if could have been raised is deemed to have been waived. She submits that framing of issues is not mandatory in the arbitration proceedings. In any event both the parties had handed over their respective list of unresolved issues before the learned arbitrator. The learned arbitrator as well as the parties were thus aware of the issues to be adjudicated upon by the learned arbitrator.

46. It is submitted by the learned counsel that oral evidence was not required to be led in the facts of this case. None of the parties applied for permission to lead oral evidence. Documentary evidence was produced by both the parties. My attention is invited to the letter dated 20th September, 2005 addressed by the petitioner through his advocate stating that he had already produced all the documents, evidence and record to support his claim before 18th September,

2005.

47. It is submitted by the learned arbitrator that the learned arbitrator had given personal hearing to both the parties which was availed of by the parties. She placed reliance on minutes of 15 meetings held by the learned arbitrator and would submit that it would clearly indicate that both the parties were duly heard by the learned arbitrator and their respective submissions were duly recorded. She submits that there is thus no substance in the grievance made by the petitioner that no hearing was rendered by the learned arbitrator to the petitioner. She submits that only in the 15th meeting held on 6th March, 2006 when the learned arbitrator replied to the query raised by the petitioner as to whether the learned arbitrator would take up the issue of bidding in the flat or issue of Rs. 12.51 lacs would be taken up first, the petitioner refused to participate in the arbitration proceedings and started making allegations of bias against the learned arbitrator.

48. Insofar as submission of the petitioner that the learned arbitrator visited the flat in possession of the petitioner is concerned, it is submitted by the learned counsel for the respondent that the learned arbitrator has not decided the claim in respect of the said flat on the basis of the complaint made by the respondent regarding illegal alterations. The learned arbitrator has visited the flat in good faith without prior intimation to the petitioner as it was represented to him that the petitioner was usually available at home by 7.30 p.m. The learned arbitrator had also clarified this issue by addressing a letter to the petitioner in response to his allegation of bias made by the petitioner. The petitioner withdrew the allegation of bias made against the learned arbitrator and had apologized.

49. Insofar as issue raised by the petitioner that the learned arbitrator met earlier intervenor in absence of the petitioner and based his award on the same is concerned, it is submitted by the respondent that no such ground is raised by the petitioner in the arbitration petition. No such objection was raised before the learned arbitrator though an application was filed under section 13 of the Arbitration Act before the learned arbitrator. She submits that in any event the award is not based on the interaction of the arbitrator with the earlier intervenors and the arbitrator has given his independent reasons for directing the petitioner to pay Rs. 12.51 lacs with interest to the respondent.

50. Insofar as the submission of the petitioner that the issue in respect of the distribution of Simar property is not decided by the learned arbitrator is concerned, it is submitted that since it was mutually agreed between the parties that the Simar property would be divided equally with the help of Mr. Pravinbhai Bhat as recorded in paragraph 2.30 of the award and in the minutes of the meeting dated 18th September, 2005, the matter stood resolved and thus no further directions were issued by the learned arbitrator. The petitioner has not raised any ground in the petition that no such agreement was arrived at between the parties as recorded by the learned arbitrator. She submits that in any event, the respondent is ready to carry out the division as agreed with the help of Mr.

Pravinbhai Bhat who is uncle of the petitioner. It is submitted that in ground 44 raised by the petitioner, it is the case of the petitioner himself that the property at Simar, Gujarat was not a point of issue in the arbitration agreement.

51. Insofar as issue regarding ownership of brand Kemphasol allegedly not decided by the learned arbitrator is concerned, it is submitted by the learned counsel that the issue regarding ownership of the said property was not raised by the petitioner but was raised by the respondent. The petitioner has not raised any such ground in the petition. Without prejudice to the aforesaid submission, it is submitted that the said issue may be referred to the arbitration of the same arbitrator or any other arbitrator.

52. Insofar as issue of bias raised by the petitioner is concerned, it is submitted that the learned arbitrator had offered to withdraw on 16th March, 2006 in view of the allegation made by the petitioner. The petitioner had apologized and reposed his faith in the learned arbitrator. The learned arbitrator had recorded this fact in the minutes of the meeting held on 6th March, 2006. She submits that though the allegations of bias were made by the petitioner against the learned arbitrator twice, the same were withdrawn by the petitioner with apology given to the learned arbitrator. The petitioner had chosen not to participate in the arbitral proceedings vide his letter dated 2nd May, 2008. She submits that the challenge to the arbitrator under section 13(2) of the Arbitration Act has to be made within 15 days which the petitioner had failed. She submits that in any event, the learned arbitrator has rejected such allegation of bias made by the petitioner having found no substance and incorrect.

53. Insofar as issue of delay in making an award by the learned arbitrator raised by the petitioner is concerned, the learned arbitrator has explained delay in paragraph 1.87 of the impugned award. She submits that since parties were negotiating for settlement, the petitioner had requested the learned arbitrator not to proceed with the arbitration. The parties had gone to the native place in Gujarat in the month of March 2010 for division of silverware and the same was recorded in the respondent's letter dated 14th April, 2010 addressed to the learned arbitrator. A copy of the said letter was forwarded by the learned arbitrator to the petitioner alongwith his letter dated 14th April, 2011. The respondent had informed the learned arbitrator by letter dated 21st March, 2011 about the pending negotiations between the parties and had requested him to hold on the award. She submits that there was thus no delay on the part of the learned arbitrator in rendering the award as canvassed by the petitioner. She submits that in any event no prejudice is caused to the petitioner in view of delay if any in declaring award.

54. Insofar as the issue about the Garden View Flat whether was in dispute or it was already resolved is concerned, learned counsel for the respondent submits that the petitioner in his own letter dated 26th November, 2007 to the learned arbitrator had stated that the said flat was in dispute. The petitioner had also referred to the dispute regarding the said flat in the application filed by his

mother before the Co-operative Court and also in the application dated 14th February, 2008 filed by the petitioner under section 13 of the Arbitration Act. The petitioner had stated about the said dispute even in the complaint filed by the petitioner against the respondent in the Gamdevi Police Station and had agreed to pay certain amount to the respondent.

55. Learned counsel for the respondent then submits that the learned arbitrator has rightly recorded in the impugned award and in paragraph 1.43 that the learned advocate of the petitioner had offered to settle the issue of flat by bid and it was accordingly decided that the bids for the said flat should be given by both the parties in the next meeting. The petitioner has not raised any such ground in the petition that no such offer was made by the petitioner or his advocate. The learned arbitrator had recorded the said offer to settle the issue of flat by bid by the petitioner in the minutes of the meeting held on 12th December, 2005. She submits that the minutes of the meeting dated 12th December, 2005 were read, confirmed and signed by both the parties, their advocates in the meeting held on 6th March, 2006.

56. Learned counsel for the respondent submits that in the minutes of the meeting dated 6th March, 2006, the learned arbitrator has recorded that the learned advocate of the petitioner had asked him as to which other matter is pending apart from the matter of residential flat and whether the matter of Rs. 12.51 lacs or the matter of the bidding of the flat would be taken up first in the next meeting. No such ground is raised by the petitioner in the petition that no such query was raised by the petitioner in the said meeting before the learned arbitrator. She submits that the refusal by the arbitrator to decide in respect of Garden View Flat in absence of agreement between the parties since the same was subjudice was made a ground of bias against the learned arbitrator made by the petitioner in his application dated 14th February, 2008. The petitioner had asked the learned arbitrator to decide on the flat issue despite it was being subjudice. Since the learned arbitrator was initially reluctant to decide the said issue, the petitioner had made the said decision of the arbitrator as a ground of bias in his application dated 14th February, 2008. She submits that the respondent had not given up his claim before the learned arbitrator in respect of the said flat or for an amount of Rs. 12.51 lacs with interest.

57. Insofar as issue as to whether the learned arbitrator could have decided about the flat as per Will of Kankuben is concerned, she submits that the petitioner is actually benefited as even according to the said Will, the said Kankuben had bequeathed half of her share in the flat to the petitioner and the other half belong to the respondent. Though under the said Will, the petitioner would be entitled to only 1/4th share in the flat, the arbitrator has awarded him half share in the flat. She submits that the Will of Kankuben was never in dispute and in fact had been acted upon by the parties with respect to the other bequest made therein.

58. Insofar as the claim in respect of Rs. 12.51 lacs whether was part of the

arbitration agreement is concerned, learned counsel for the respondent submits that the said issue was in dispute and was raised by the respondent in his list of issues annexed at Exhibit-C to the petition. The petitioner also had contended in his list of issues that no such amount was to be paid by the petitioner which clearly indicated that there was existing a dispute about recovery of the said amount by the respondent. She submits that the respondent had contributed the said amount and thus was entitled to be awarded the said amount with interest as per the verdict dated 6th April, 2001. She submits that the learned arbitrator has rendered a finding of fact on this issue which is not perverse and thus cannot be interfered with by this court under section 34.

59. Insofar as issue in respect of Popatwadi Godown is concerned, she submits that the learned arbitrator has rendered a finding of fact and cannot be interfered with by this court. She submits that in any event, since the value of the said property coming to the share of the petitioner was more in comparison to the value of the property coming to the share of the respondent, the learned arbitrator rightly directed the petitioner to give half of the difference in the value. She submits that the claim for difference in value of the office and godown was an issue which is admitted by the petitioner in his list of unresolved issues.

60. Insofar as issue regarding sale proceeds of stocks increased by the petitioner is concerned, it is submitted by the respondent that since the petitioner had sold off share of goods of the respondent at a lesser price than the market price, the learned arbitrator had rightly directed the petitioner to purchase the same from the market and to give the same to the respondent. She submits that the learned arbitrator has not granted any relief for specific performance in respect of such goods, she submits that it was a case of the misappropriation and undervaluation of sale of stock, learned arbitrator thus rightly directed the petitioner to purchase such stock from the open market and to handover the same to the respondent.

61. Insofar as issue regarding expenses alleged to have been incurred is concerned, she submits that the said issue has been extensively discussed in the meeting and has been considered by the learned arbitrator in paragraph 2.46 of the impugned award and has rendered a finding of fact which cannot be interfered with by this court.

62. Insofar as issue raised in respect of the cars is concerned, she submits that since the car of the petitioner was valued at higher amount than the car of the respondent, the learned arbitrator rightly asked the petitioner to pay the half of the difference to the respondent. The petitioner himself had agreed to pay the difference in his list of unresolved issues. This court cannot thus interfere with the findings of fact on that issue.

63. Insofar as direction to pay a sum of Rs. 3.06 lacs to the respondent in respect of the claim of M/s. Lancaster is concerned, she submits that the learned arbitrator has rendered reasons in respect of the said claim and has rendered

finding of fact in paragraph 2.65 to paragraph 2.67 of the impugned award and no interference is permitted with such finding of fact.

64. Insofar as issue regarding Acros Account is concerned, she submits that the respondent had paid the said amount of Rs. 4.37 lacs to M/s. Acros and thus the learned arbitrator rightly directed the petitioner 50% of the said amount to the respondent. This court cannot interfere with such finding of fact.

65. Insofar as issue raised in respect of the payment awarded based on Will of Mr. Pravinbhai is concerned, learned counsel for the respondent did not contest the said part of the award made by the petitioner seriously.

66. Insofar as claim arising out of B.P. Joshi loan account is concerned, learned counsel for the respondent did not defend the challenge to this claim to the petitioner seriously.

67. Insofar as direction to the petitioner to share half of the brokerage paid by the respondent in respect of the Maroo Bhavan Office is concerned, she submits that since the petitioner had insisted on his mother's name to be entered in the rent receipt of the said property. The petitioner was rightly directed to share half of the brokerage paid by the respondent.

68. Insofar as compound interest at the rate of 18% per annum and the period of interest from 1999 awarded by the learned arbitrator is concerned, the learned arbitrator for the respondent submits that the learned arbitrator has awarded interest from 31st March, 1999 as accounting base as the business and assets were separated by the parties as recorded in the recital in the agreement dated 21st April, 2004. She submits that even the petitioner in item No. 6 of his list of unresolved issues, the petitioner has stated the date 31st March, 2009 as accounting base. She submits that the learned arbitrator has awarded interest to both the parties and thus no interference with that part of the award also is warranted.

69. Mr. Purohit, learned counsel in rejoinder submits that the petitioner has disputed the valuation of godowns and other properties since the learned arbitrator had adopted different yardstick between the claims of the petitioner and the respondent. He submits that there was no agreement between the parties, not to file any pleadings and thus the learned arbitrator could not have proceeded with the arbitration without directing both the parties to file pleadings and till such pleadings were filed by the parties. Filing of pleadings under section 23 was mandatory and could not be given a go-bye. Mr. Purohit learned counsel for the petitioner placed reliance on the judgment of this court delivered on 26th April, 2006 in case of Amrutlal Tirathram Gupta vs. Smt. Sushma Sanjiv Gupta & Anr. in Appeal from Order No. 1007 of 2001 and submits that since the pleadings were not filed by the parties and the learned arbitrator did not allow the parties to lead oral evidence, award deserves to be set aside on that ground alone. Learned counsel placed reliance on said judgment also in support of the submission that the learned arbitrator could not have collected any evidence by

holding meeting with the intervenors without giving the notice to the petitioner.

70. Insofar as issue of personal hearing raised by the petitioner is concerned, he submits that the last meeting was attended by the petitioner on 6th March, 2006. All the issues were not resolved by 6th March, 2006. The petitioner had asked for personal hearing thereafter which was not given by the learned arbitrator. The letter of the petitioner through his advocate that he would not participate was sent much later. In respect of the issue about claim of Rs. 12.51 lacs raised by the respondent is concerned, it is submitted that the said claim was given a go-bye by the respondent. He submits that the minutes of the meeting dated 6th March, 2006 was not finalized and thus could not be relied upon by the respondent. The petitioner had raised such issue in the arbitration petition and more particularly paragraph 41. He submits that by the letter dated 23rd March, 2008, the learned arbitrator himself had agreed not to decide the issue of flat. In the letter dated 27th March, 2008, the learned arbitrator informed that he would decide the issue of flat only if consent of both the parties was received. He submits that no consent was given by the petitioner thereafter permitting the learned arbitrator to decide the issue of flat. In respect of claim of Rs. 12.51 lacs, it is submitted by the learned counsel for the petitioner that the learned arbitrator himself in his letter informed that he would decide the issue only as per last Memorandum of Understanding and thus acted beyond the scope of his jurisdiction in respect of the said claim of Rs. 12.51 lacs.

71. Learned counsel appearing for the respondent submits that 17 issues were already resolved and only implementation thereof was to be effected in due course. He submits that though the petitioner had led some evidence by filing documents, the petitioner was entitled to make comment on the evidence produced by the respondent. He submits that there was no agreement between the parties that no oral hearing need be given by the learned arbitrator. The learned arbitrator therefore could not have dispensed with the oral hearing. He submits that the petitioner had addressed letters to the learned arbitrator for fixing a date for hearing. However, the learned arbitrator did not fix any hearing for last three years before making any award. It is submitted by the learned counsel for the petitioner that though the petitioner had called upon the learned arbitrator to lay down the procedure for conducting arbitral proceedings and had made application in that regard, the learned arbitrator did not decide the said application and did not decide the procedure for conducting the arbitral proceedings. He submits that the learned arbitrator has decided the testamentary issue in the arbitration proceedings which was beyond the jurisdiction of the learned arbitrator. He submits that the learned arbitrator had not seen the Will of the mother and thus could not say that the same was an undisputed Will. The said document was never produced by any of the party before the learned arbitrator. He submits that even the claim for Rs. 12.51 lacs decided by the learned arbitrator was based on such alleged Will.

72. Insofar as delay in rendering arbitral award is concerned, learned counsel for

the petitioner submits that the learned arbitrator was exchanging correspondence with the respondent after holding the last meeting and before declaration of award which shows the bias on the part of the learned arbitrator. The petitioner was never informed about such private correspondence exchanged between the learned arbitrator and the respondent. Learned counsel invited my attention to the page 88 of the arbitration petition i.e. part of the award (post script) and would submits that the learned arbitrator has not explained delay during the period between 2008 and January 2011. Learned counsel for the petitioner submits that even the interest calculation made by the learned arbitrator on page 82 and page 86 while awarding claim with interest in favour of the petitioner is incorrect.

REASONS AND CONCLUSIONS:-

73. It is not in dispute that the parties had entered into an agreement to refer their disputes to arbitration on 21st April, 2004 and had appointed the learned arbitrator. There were about 15 meetings held by the learned arbitrator. Out of 15 meetings, the first 9 meetings were attended by the parties in person before the learned arbitrator and the remaining meetings were attended by the parties with their learned advocates. It is not in dispute that none of the parties had submitted any statement or claim and written statement and counter claim before the learned arbitrator in any of the meetings till the award was rendered by the learned arbitrator. No oral evidence was led by any of the parties. A perusal of the record indicates that though the petitioner had filed an application on 17th April, 2006 before the learned arbitrator to follow the procedure under the provisions of the Arbitration Act, 1996 and to fix the time bound schedule to compete the entire proceedings, the learned arbitrator did not issue any directions to the parties to file the statement of claim and the written statement. The petitioner thereafter had filed another application on 14th February, 2008 and had once again requested the learned arbitrator to follow the procedure. Admittedly, there was no hearing fixed by the learned arbitrator from 2008 onwards till the award was declared on 9th May, 2011.

74. A perusal of the record also indicates that the learned arbitrator has though passed an order on 27th March, 2008, which was passed without rendering any hearing to any of the parties, the learned arbitrator though rejected the allegations of bias made by the petitioner against him in the said order, the learned arbitrator did not decide the applications dated 17th April, 2006 and 14th February, 2008, requesting the learned arbitrator to decide and follow appropriate procedure under the provisions of the Arbitration Act, 1996. In my view since the learned arbitrator rendered the award after three years from the date of the last application made by the petitioner i.e. on 27th March, 2008, the learned arbitrator had even otherwise ample time to follow the procedure prescribed under the provisions of the Arbitration Act, 1996 and for hearing the parties. It is not the case of the respondent that the award was ready in all respects in the month of May, 2008 itself.

75. A perusal of the record clearly indicates that there was no agreement between the parties that the parties would not file any pleadings i.e. the statement of claim and the written statement or counter claim. This Court in its judgment in the case of Amrutlal Tirathram Gupte vs. Smt. Sushma Sanjiv Gupta & Anr. in Appeal form Order No. 1007 of 2001 delivered on 26th April, 2006 has held that it is mandatory requirement of section 23(1) of the Arbitration Act, 1996 that the claimant has to file his statement of claim and the respondent has to submit his defence and thereafter the parties have to lead documentary and oral evidence. I am not inclined to accept the submission of learned counsel for the respondent that since the parties had submitted the list of issues to be decided by the learned arbitrator, filing of the statement of claim along with documents, and written statement was dispensed with.

76. In my view, the list of issues to be discussed by the learned arbitrator cannot amount to filing of statement of claim and the reliefs sought by each of the parties. The list disclosing the issue to be discussed/decided by the learned arbitrator can be construed at the most as points of determination and cannot be in substitution of the pleadings required to be filed under section 23 of the Arbitration Act, 1996. In my view, the filing of pleadings stating facts supporting claim, the points at issue and the relief or remedy sought is mandatory and is in compliance with the principles of natural justice. The opponent is always entitled to know the case of the rival party and the reliefs sought by him to enable him to deal with such allegations and to seek the counter relief, if any. No party can seek any relief orally before the learned arbitrator and has to plead his case in writing. In my view provision for filing of pleadings stating facts, points at issue and reliefs or remedy sought is not derogable and thus there is no question of waiver under section 4 of the Arbitration Act.

77. In my view, merely because the petitioner who is appearing in person in the first 9 meetings did not seek any direction to file the statement of claim along with the documents thus cannot amount to waiver. No sooner the services of the advocate was engaged by the petitioner, the petitioner filed an application on 27th April, 2006 itself which was five years prior to the date of award requesting the learned arbitrator to follow the procedure under the provisions of the Arbitration Act, 1996 and to fix the time bound schedule to complete the entire proceedings. There was no objection from the respondent also to the said application filed by the petitioner requesting the learned arbitrator to follow the procedure under the provisions of the Arbitration Act, 1996 on the ground of waiver or otherwise. The learned arbitrator in my view, has committed patent illegality by not allowing the parties to file pleadings so as to indicate their case and reliefs sought. The impugned award is thus in violation of section 23 of the Arbitration Act, 1996 and deserves to be set aside on this ground alone. In my view since the award made by the learned arbitrator is not in accordance with provisions in Part-I, such arbitral award can be set aside under section 34(2)(a) (v) of the Arbitration Act.

78. Be that as it may, a perusal of the record indicates that not only the learned arbitrator did not decide the application dated 17th April, 2006 and the application dated 14th February, 2008 made by the petitioner requesting the learned arbitrator to follow the procedure under the provisions of the Arbitration Act, 1996 and fix early hearing, the learned arbitrator did not hold any meeting after passing of the order dated 27th March, 2008. The award is made admittedly on 9th May, 2011. A perusal of the award indicates that the learned arbitrator has not explained gross delay of more than three years in declaring the said award from the date of the last meeting. A perusal of the award indicates that the learned arbitrator has allowed most of the reliefs claimed by the respondent and that also with compound interest at the rate of 18% p.a. on most of the claims from 1st April, 1999 till the date of award. In view of this unexplained gross delay in rendering the arbitral award of more than three years, the case of the petitioner was seriously prejudiced. Since the learned arbitrator did not fix any hearing and did not follow any procedure though repeatedly requested by the petitioner, the impugned award deserves to be set aside on this ground also.

79. Learned counsel for the respondent sought to explain the gross delay on the part of the learned arbitrator in rendering the award after more than 3 years on the ground that the petitioner and the respondent were negotiating for settlement and accordingly the respondent had informed the learned arbitrator not to proceed and not to declare the said award in view of the pending negotiations. A perusal of the record indicates that the petitioner never requested the learned arbitrator not to declare an award in view of the alleged pending negotiations for settlement. The respondent was exchanging the correspondence with the learned arbitrator behind the back of the petitioner. Though the petitioner was requesting the learned arbitrator even during the said period of three years to fix an early date of hearing and to follow the procedure, the learned arbitrator did not inform the petitioner that he was not declaring the award in view of the pending negotiations between the parties. The respondent had not forwarded any copy to the petitioner of the letters addressed to the learned arbitrator. I am thus not inclined to accept the submission of the learned counsel for the respondent that award was not declared due to pending alleged settlement between the parties.

80. The next submission of the learned counsel for the petitioner is that the learned arbitrator had visited the flat of the petitioner on the oral complaint made by the respondent without any notice given to the petitioner with a view to collect evidence. A perusal of the record indicates that it is not in dispute that the learned arbitrator on the request of the respondent had visited the flat in occupation of the petitioner without issuing any notice to the petitioner. The respondent had accompanied the learned arbitrator. The petitioner had raised an objection about such unscheduled visit of the learned arbitrator along with the respondent at the place of residence of the petitioner and made the allegation of bias against the learned arbitrator. In a letter addressed by the learned arbitrator

to the petitioner, the learned arbitrator admitted the fact that he had visited the house of the petitioner at the request of the respondent without issuing any notice to the petitioner. It was also the case of the petitioner that the learned arbitrator thereafter went to take dinner with the respondent and his son. In my view, the learned arbitrator could not have visited the place of residence of the petitioner when the matter was subjudice and that also without issuing any notice to the petitioner in advance on the request of the respondent.

81. In so far as the submission of the learned counsel for the respondent that merely because the learned arbitrator visited the place of residence of the petitioner without issuing any notice to the petitioner, it did not prejudice the mind of the learned arbitrator or that the award was not based on such visit is concerned, in my view, there is no merit in this submission of the learned counsel for the respondent. Even if the learned arbitrator wanted to visit the place of residence of the petitioner for the purpose of ascertaining certain facts, the same could not have been done without prior notice to the petitioner and more particularly when the petitioner had alleged bias against the learned arbitrator in past.

82. In so far as the submission of the learned counsel for the petitioner that the learned arbitrator had met earlier intervenors in absence of the petitioner and collected the evidence and based on such meetings with such intervenors, the learned arbitrator placed reliance on such information in the impugned award and thus the impugned award is in violation of principles of natural justice is concerned, a perusal of record indicates that though the petitioner had raised such objection and had requested the learned arbitrator to make those intervenors present with whom the learned arbitrator had held meetings, the learned arbitrator refused to call those intervenors in the meeting. In my view, the learned arbitrator could not have collected any information from the intervenors behind the back of the petitioner and even if could have collected, he could not have relied upon such information unless he would have disclosed such information to the parties with an opportunity to deal with the same before relying upon such information in the impugned award. This Court in the case of *Amrutlal Tirathram Gupta (supra)* has held that an arbitrator cannot consult anybody behind the back of the parties and even if the arbitrator wants to consult somebody then that person has to be called as witness. In my view, the judgment squarely applies to the facts of this case.

83. A perusal of the award indicates that the learned arbitrator has placed reliance on the information alleged to have been obtained by him from such intervenors in the impugned award. Even if it is held that under the arbitration agreement entered into between the parties, the learned arbitrator could have held meetings with such intervenors, the information obtained by the learned arbitrator could not have been used as evidence unless it was brought to the notice of the parties and an opportunity ought to have been given to the petitioner to deal with the same.

84. In so far as the submission of the learned counsel that the learned arbitrator could not have decided the issue in respect of flat No. 14 in Garden View Co-operative Housing Society Limited and in any event no such issue could have been decided as per the alleged Will of Mrs. Kankuben is concerned, a perusal of the record indicates that the said alleged Will of Mrs. Kankuben was not probated. The learned arbitrator, in my view, could not have decided the said issue in respect of flat No. 14 also in view of the fact that the proceedings were filed by the respondent in respect of the said flat before the Co-operative Court. Though the parties had held meeting and had participated before the learned arbitrator in respect of the said flat, the learned arbitrator in the last meeting held had made it clear that he would not decide the issue in respect of the said flat in view of the said issue being subjudiced before the Co-operative Court. It is not in dispute that after the said meeting, none of the parties had requested the learned arbitrator to decide the said issue in respect of flat No. 14 in the impugned award.

85. A perusal of the award clearly indicates that the learned arbitrator himself in paragraphs 2.17 and 2.18 of the impugned award has recorded that initially he was inclined to decide on all matters except that of the said flat. Learned arbitrator had not disclosed as to why he changed his mind and decided the said issue in respect of flat No. 14 subsequently after last meeting held on 27th March 2008. In my view, the issue in respect of flat was subjudiced before the Co-operative Court and the parties including the learned arbitrator having decided not to decide that matter, the learned arbitrator could not have adjudicated upon the issue in respect of the said flat. In my view, the award on that issue on the face of the it is without jurisdiction and contrary to the agreement arrived at between the parties.

86. Be that as it may, a perusal of the award indicates that in paragraphs 2.19 to 2.22 of the impugned award, the learned arbitrator while dealing with the said flat has placed reliance heavily on the alleged Will of Mrs. Kankuben which was not probated. In my view, none of the parties had produced copy of such alleged Will before the learned arbitrator. Even otherwise, the said alleged Will of Mrs. Kankuben could not have been taken into consideration for the purpose of deciding the rights of the parties in respect of the said flat. Learned arbitrator, in my view, has exceeded his jurisdiction by referring to the alleged testamentary document and deciding the said issue based on the said alleged Will and bequest alleged to have been made therein.

87. In so far as the submission of the learned counsel for the respondent that the learned arbitrator has not decided the issue in respect of the flat only on the basis of the alleged Will or that even if the learned arbitrator had placed reliance on the said Will, the petitioner having been benefited by virtue of the learned arbitrator awarding 1/2 share in favour of the petitioner is concerned, in my view, there is no merit in the submission of the learned counsel for the respondent. The learned arbitrator at the first instance could not have relied

upon such alleged Will at all. The issue was already subjudice before the Cooperative Court. Learned arbitrator could not point out any correspondence or agreement between the parties that after the learned arbitrator had taken a decision in the meeting held on 27th March 2008 not to decide the issue of flat, how the learned arbitrator could decide the said issue without consent of both the parties subsequently. No reliance on an unprobated Will could be made by the learned arbitrator.

88. In so far as the alleged claim of the respondent for Rs. 12.51 lacs towards alleged contribution made by the respondent in respect of the said flat is concerned, a perusal of the record indicates that there was no such reference made to the learned arbitrator in respect of the said claim of Rs. 12.51 lacs. Even for the purpose of deciding the said claim, the learned arbitrator placed reliance on the information alleged to have been obtained from former intervenors i.e. i) Mr. Balwantbhai Mehta, ii) Mr. Nathalal K. Rajyagor, iii) Mr. Atulkumar and iv) Mr. Pravinbhai Bhat for ascertaining whether they had pressurized the petitioner to agree to the payment of Rs. 12.51 lacs. Learned arbitrator in paragraph 2.25 has referred to such information alleged to have been obtained from those intervenors and has recorded a finding that all such intervenors had agreed that the petitioner was not pressurized to agree to the payment of Rs. 12.51 lacs to the respondent. It is not the case of the respondent that the said intervenors were produced as witness by any of parties or were called in the arbitration meeting in presence of the petitioner. Learned arbitrator did not disclose to the petitioner about the alleged information obtained by him from those intervenors. Award is in violation of principles of natural justice.

89. Be that as it may, a perusal of the record indicates that even while deciding the said issue in respect of Rs. 12.51 lacs, learned arbitrator placed reliance on the alleged Will of Mrs. Kankuben Rajyagor and allowed the said claim in favour of the respondent. A perusal of the record also indicates that on the said principal amount of Rs. 12.51 lacs, the learned arbitrator had allowed compound interest @ 18% p.a. from 1st April 1999 to 31st March 2011 which worked out to Rs. 78,65,778/-. In my view, the award shows patent illegality on the face of the record which goes to the root of the matter. No reliance on the alleged Will could be placed by the learned arbitrator.

90. In so far the award in respect of Simar property is concerned, it is submitted by the learned counsel for the respondent that it was mutually agreed between the parties that the said property would be divided equally with the help of Mr. Pravinbhai Bhat unless no further directions were issued by the learned arbitrator.

91. In so far as the issue in respect of Popatwadi godown is concerned, it is the case of the respondent that the value of the said property coming to the share of the petitioner was more in comparison to the value of the property coming to the share of the respondent and thus the learned arbitrator rightly directed the petitioner to give half of the difference in the value.

92. In so far as the direction of the learned arbitrator regarding sale proceeds of stocks is concerned, it is the case of the respondent that the learned arbitrator has not granted any relief for specific performance in respect of such goods and has only directed the petitioner to purchase such stocks from the market and to give the same to the respondent. It is submitted by the respondent that the learned arbitrator has rendered a finding of fact in respect of the issue regarding expenses and in respect of the value of cars. In respect of the claim of M/s. Lancaster, regarding Acros Account, share of 1/2 of the brokerage in respect of Maroo Bhavan Office, it is submitted by the learned counsel for the respondent that the learned arbitrator has rendered a finding of fact which cannot be interfered with.

93. In so far as the issues in respect of B.P. Joshi loan account and the award based on the alleged Will of Mr. Pravinbhai are concerned, learned counsel does not defend the award rendered by the learned arbitrator in respect of these issues seriously.

94. In so far as the award of interest @ 18% p.a. awarded by the learned arbitrator on most of the claims at compound rate and that also with effect from 31st March 1999 is concerned, in my view, since the entire award shows patent illegality and is in gross violation of the principles of natural justice and the award is set aside on that ground, the award in respect of interest is also set aside.

95. Be that as it may, a perusal of the record indicates that there was no agreement between the parties for payment of compound rate of interest. Learned arbitrator has awarded interest from 31st March 1999 till the date of the award though the proceedings were pending for last several years. Learned arbitrator himself has not rendered the award for more than 3 years after the last arbitral meeting. Under Section 37(1)(a) of the Arbitration Act, the learned arbitrator in the absence of agreement between the parties can award the reasonable rate of interest and cannot award the at compound rate that also @ 18% p.a. The award in respect of the interest deserves to be set aside even on that ground.

96. In respect of other three small claims which are alleged to have been based on finding of facts are concerned, since the entire award is set aside, I need not go into the validity of those three claims separately.

97. I therefore pass the following order:-

- a) The impugned award dated 9th May 2011 passed by the learned arbitrator is set aside.
- b) Arbitration petition is made absolute in aforesaid terms.
- c) There shall be no order as to costs.