(2015) 07 BOM CK 0252

In the Bombay High Court

Case No : Arbitration Petition Nos. 646, 456 of 2015 and 1683 of 2014

Rashidabai Allarakha and Others APPELLANT

Vs

Mehrunnissa Sheikhd Abdul Rahim and Others RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16, 21, 34, 48, 49(c)
Evidence Act, 1872 — Section 110
Registration Act, 1908 — Section 17

Citation : (2016) 1 ARBLR 290 : (2016) 1 BomCR 308

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

Bench : Single Bench

Advocate : Cherag Balsara and Huda Diamondwala i/b. Diamondwala and Co., for the Appellant

Judgement

R.D. Dhanuka, J—The petitioners in Arbitration Petition No. 646 of 2015 and Arbitration Petition No. 456 of 2015 have impugned portion of the arbitral award dated 30th September, 2014 under section 34 of the Arbitration and Conciliation Act, 1996 (for short the said Arbitration Act). The petitioners in Arbitration Petition No. 646 of 2015 have filed Arbitration Petition No. 1683 of 2014 under section 9 of the Arbitration Act inter alia praying for interim measures. By consent of parties, all the aforesaid petitions were heard together and are being disposed of by a common judgment. Some of the relevant facts for the purpose of deciding these three petitions are as under:-

2. The petitioners in Arbitration Petition No. 646 of 2015 were the original claimants whereas the respondents thereto were the original respondents in the arbitral proceedings. For the sake of convenience the parties would be described in the later part of this order as they were described in the arbitral proceedings.

3. The present dispute is governed by a deed of partnership dated 12th July, 2002 entered into between claimants and the respondents which provided that the claimants together had 76% share, the respondent No. 1 had 7% share and

respondent Nos. 2 and 3 together had 17% share in the partnership firm. The duration of the said partnership firm was at will. The business of the said partnership firm was initially managed by the claimants and their family members.

4. Clause 2 of the partnership deed provided that the business of the partnership shall continue to be that of running and conducting a guest house, lodging house and hotel and to do such other business as the partners would mutually agree upon amongst themselves from time to time.

5. Clause 15 of the said partnership deed recorded an arbitration agreement. It was the case of the claimants that the respondent No. 1 made false allegations vide letter dated 14th July, 2008 addressed to the claimants Nos. 5, 7, 8 and 11 alleged misuse of position by the other partners. After receipt of the said letter, the claimants Nos. 5, 7, 8 and 11 and respondent No. 1 had a meeting, wherein all the allegations mentioned in the said letter were refuted. It was the case of the claimants that respondent No. 1 through her son started forcibly entering into the basement area of the hotel by bringing 50 to 60 animals with an intention to use the basement area of the said Hotel Sagar as slaughter house. The claimants Nos. 1 to 11 by their letter dated 1st January, 2009 addressed to the police authority requested them to investigate the matter thoroughly and register an offence against respondent No. 1 and her sons. It was the case of the claimants that on 5th February, 2009 one Mr. Shamsuddin Charania who was appointed as the CEO of the firm, respondent No. 1 through her sons and three unknown persons physically prevented the entry of the said appointees and of claimants Nos. 8 and 11 and threatened them with a serious consequences if they tried to enter into Hotel Sagar or take charge of the management of Hotel Sagar.

6. Claimants and respondent Nos. 2 and 3 by their advocates'' letter dated 20th February, 2009 dissolved the partnership firm and invoked the arbitration clause. It was the case of the claimants that respondent No. 1 did not comply with the requisitions contained in the said letter dated 20th February, 2009 and continued all her illegal activities in the said Hotel Sagar. Claimants also filed complaint against the respondent No. 1 with the police.

7. Sometime in the year 2010, the claimants filed petition under section 9 of the Arbitration Act in this court inter alia praying for an appointment of Court Receiver. On 24th January, 2011 this court passed an order in the said petition directing the parties to maintain status-quo in relation to the properties which were described in Ex. A to the said petition. On 18th June, 2012 with the consent of the parties this court referred all the disputes between the parties to the arbitration and continued the ad-interim order passed on 24th January, 2011 until passing of the order by the learned arbitrator and for a further period of four weeks thereafter.

8. Before the learned arbitrator, parties arrived at an understanding on 3rd April,

2014 and agreed that accounts in accordance with section 48 of the firm need not be settled. It was agreed that the properties of the firm need to be identified, the same need to be dealt with and the proceeds thereof need to be distributed.

9. Pursuant to the directions issued by the learned arbitrator, the claimants filed statement of claim. Respondent Nos. 2 and 3 supported the case of the claimants. Respondent No. 1 also filed counter claim, claimants and the respondent No. 1 examined witnesses before the learned arbitrator.

10. On 30th September, 2014 the learned arbitrator made an arbitral award holding that any liability of the firm that may arise for the period prior to 5th February, 2009 shall be borne exclusively by the claimants and the claimants shall indemnify the other partners of any liability that may arise from the said period. It has been held that for any liability relating to period after 5th February, 2009 respondent No. 1 shall be exclusively liable and the other partners shall not be liable in any manner whatsoever. Respondent No. 1 has been directed to indemnify the other partners for any liability that may be borne by them for the period after 5th February, 2009.

11. It is held by the learned arbitrator that the partnership firm had acquired rights and interests in the ground floor, first floor, second floor and third floor terrace of the building known as Hotel Sagar situated at Baitul Aman, Corner of Bellasis Road and Maulala Azad Road, Mumbai 400 008 and the same were the properties of the firm. The learned arbitrator directed that the said properties be sold and the proceeds thereof after meeting all the expense of the sale be distributed between the partners in their respective share as set out in the Deed of Partnership dated 12th July, 2002.

12. Learned arbitrator held that since the dispute was between the partners of the firm that stood dissolved and considering the nature of the disputes, the parties shall bear their own costs. The original claimants and respondent No. 1 have filed two separate arbitration petitions under section 34 of the Arbitration Act challenging different portions of the said arbitral award dated 30th September, 2014.

13. Mr. Balsara, learned counsel appearing for the original claimants invited my attention to the deed of partnership, pleadings filed by both the parties, oral evidence led by the parties and also various findings rendered by the learned arbitrator in the impugned award. It is submitted that though the learned arbitrator has given finding that the suit firm had acquired rights on the ground floor, first floor, second floor and third floor of the building known as Hotel Sagar, the learned arbitrator erroneously held that insofar as basement area is concerned, the same did not belong to the partnership firm. He submits that there was an agreement dated 1st August, 1979 in respect of the car parking space in the basement which document has not been considered by the learned arbitrator. He submits that the said document would clearly indicate that the partnership firm was in use and occupation of the said basement area since

inception and that respondent No. 1 through her sons had gained illegal entry into the said hotel premises including basement area on 5th February, 2009.

14. Learned counsel for the claimants submits that though claimants had established their case that the firm had acquired basement, the learned arbitrator rejected the said plea of the claimants without any basis.

15. Insofar as finding rendered by the learned arbitrator holding that the said firm had acquired rights and interests in the ground floor, first floor, second floor and third floor terrace of the building known as Hotel Sagar is concerned, he submits that the said finding rendered by the learned arbitrator is based on the appreciation of the documents and the oral evidence led by both parties and such finding is not perverse, this court cannot interfere with such finding under section 34 of the Arbitration Act. He invited my attention to various such findings recorded by the learned arbitrator in the impugned award and submits that that part of the award does not require any interference. He opposes the petition filed by the original respondent No. 1 insofar as those findings rendered by the learned arbitrator is concerned.

16. Learned counsel appearing for the respondent Nos. 2 and 3 supported the case of the original claimants and submits that though the respondent Nos. 2 and 3 have not filed any separate petition challenging any part of the arbitral award, they are supporting the case of the original claimant.

17. Mr. Palan and Ms. K.C. Nichani, learned counsel appearing for the respondent No. 1 invited my attention to the various partnership deeds executed between the parties including one of the partnership deed which was executed between the claimants and the husband of the respondent No. 1. Learned counsel submits that the husband of the respondent No. 1 was already in possession of the entire building much prior to the date of execution of the partnership deed in respect of the partnership deed. It is submitted that the husband of the respondent No. 1 had permitted the said firm to use the said property for conducting the business thereon and no right of any nature was created in the firm or its partners. It is submitted that the learned arbitrator could not have declared ground floor, first floor, second floor and third floor terrace of the building known as Hotel Sagar as properties of the suit firm as the said properties originally belonged to the husband of the respondent No. 1 and could be claimed only by the respondent No. 1.

18. Learned counsel for the respondent No. 1 invited my attention to the clauses of the partnership deed and would submit that under those partnership deeds, the partnership firm was only allowed to conduct the business in the said premises. It is submitted that the said property was never treated as an asset of the suit firm and continued to be the property of the respondent No. 1 upon the demise of her husband. My attention is also invited to clause 2 of the partnership deed dated 22nd June, 1977 which was entered into between the husband of the respondent No. 1 and other partners.

19. Learned counsel appearing for respondent No. 1 then submits that the claimants did not produce any original documents before the learned arbitrator in support of their plea that the said immovable property was an asset of the suit firm and had produced photocopy of the some of such documents. Though the claimants did not establish that the primary evidence was not available, the learned arbitrator has rendered a finding of ownership of the said property of the suit firm merely on the basis of the secondary evidence. He submits that the reliance placed by the learned arbitrator on section 110 of the Evidence Act in the impugned award and is in violation of principles of Evidence Act and shows patent illegality.

20. Learned counsel for the respondent No. 1 submits that the documents relied upon by the petitioners before the learned arbitrator were required to be registered. The claimants had failed to produce any such registered document before the learned arbitrator. Reliance is placed on section 49(c) of the Arbitration Act read with Section 17 of the Registration Act and it is submitted that since the documents produced by the claimants were unregistered documents which were required to be registered, the learned arbitrator could not have considered those documents in evidence. He submits that the entire award is based on the unregistered documents and shows patent illegality.

21. It is submitted by the learned counsel for the respondent No. 1 that the learned arbitrator has allowed time barred claims. It is submitted that under Article 5 of the Schedule 1 to the Limitation Act, 1963, the arbitration proceedings ought to have filed within three years from the date of dissolution. It is submitted that the limitation in this case would stop when the statement of claim was filed by the original claimants before the learned arbitrator. It is submitted that the firm was dissolved on 20th February, 2009 whereas the statement of claim was filed by the original claimants only in the month of August 2012. It is submitted that the learned arbitrator thus has allowed ex-facie time barred claims made by the claimants and thus the award deserves to be set aside on this ground alone.

22. The next submission of the learned counsel for the respondent No. 1 is that though in the order passed under section 16, the learned arbitrator had made it clear that the issue of limitation was kept open, in the impugned award the learned arbitrator has held that the issue of limitation was already concluded. There is thus inconsistency in the impugned award insofar as issue of limitation is concerned.

23. Learned counsel for respondent No. 1 placed reliance on the photocopy of the Gumasta licence in the year 1962 in the name of K.G.N. Trading and submits that the name of the husband of the respondent No. 1 was shown in the said Gumasta licence. Reliance is also placed on the another document issued by the Municipal Corporation in which the name of the husband of the respondent No. 1 was shown as owner. It is submitted that the learned arbitrator has not considered this document properly while rejecting plea of the respondent No. 1.

24. Mr. Balsara, learned counsel for the claimants in rejoinder submits that the learned arbitrator has considered not only the documentary evidence but also the oral evidence and has rendered a finding of fact. He submits that the learned arbitrator has given a finding as to why the learned arbitrator has allowed the witness of the claimants to produce secondary evidence in the impugned award. He submits that the witness examined by the claimants had deposed as to why he did not have custody of the original documents. He submits that the learned arbitrator has considered the cross examination of the said witness conducted by the respondent No. 1 through her learned advocate which also proved the case of the claimants that the witness examined by the claimants himself had taken out photocopy from the original of the said documents produced.

25. Insofar as submission of the learned counsel for the respondent No. 1 that the documents were not registered is concerned, it is submitted that the objection about the documents not having registered or the same being not original was not raised by the respondent No. 1 when those documents were tendered by the witness examined by the claimants and thus the said objections could not have been raised at the time of hearing of the arbitral proceedings. He submits that in any event, the learned arbitrator has rightly considered those documents and has rightly rejected the contention raised by the respondent No. 1.

26. Insofar as issue of limitation raised by the learned counsel for the respondent No. 1 is concerned, it is submitted by the learned counsel for the claimants that the notice invoking arbitration agreement was admittedly issued within three years from the date of dissolution of the partnership firm. He submits that the arbitration proceedings commenced upon the receipt of the said notice by the respondents which was issued by the claimants and the limitation had stopped. It is submitted by the learned counsel that merely because the statement of claim was filed after three years from the date of dissolution of the partnership firm, the claims cannot be considered as time barred. The limitation had already stopped when the notice invoking arbitration agreement was received by the respondent No. 1.

REASONS AND CONCLUSIONS:

Whether the claims made by the claimants were barred by law of limitation:

27. It is not in dispute that the notice of dissolution of the suit firm was issued on 20th February, 2009 by the claimants to the respondents. A partnership firm was at will and thus the date of dissolution would be the date on which the said notice dated 20th February, 2009 was issued. If no notice would have been issued for invocation of the arbitration agreement, the date of filing of the statement of claim would have been the date of commencement of the arbitration proceedings for the purpose of limitation. It is not in dispute that the claimants however, had issued a notice for appointment of an arbitrator on 13th May, 2009 and the same was received by the respondents immediately. In my

view, the arbitral proceedings in respect of the disputes which were the subject matter of the said notice dated 13th May, 2009 commenced on the date on which such notice was received by the respondents. The limitation thus stopped when the said notice was received by the respondents. In my view, merely because the statement of claim was filed by the claimants in the month of August, 2012 that would not make the claims made by the claimants barred by law of limitation. The arbitral proceedings in respect of such disputes had already commenced in the month of May, 2009 itself when the said notice for invoking arbitration agreement under section 21 was issued by the claimants and was received by the respondents. The limitation in this case was not stopped on the date of filing statement of claim by the claimants but had already stopped in the month of May, 2009. In my view, there is thus no substance of any nature whatsoever in the submission made by learned counsel for respondent No. 1 that the limitation had stopped only when the statement of claim was filed by the claimants before the learned arbitrator.

28. Insofar as the judgment of the Supreme Court in the case of Milkfood Ltd. Vs. GMC Ice Cream (P) Ltd., (2004) 1 ARBLR 613 : (2004) 121 CompCas 581 : (2004) 3 CompLJ 16 : (2004) 4 CTC 479 : (2004) 4 JT 393 : (2004) 4 SCALE 291 : (2004) 7 SCC 288 : (2004) 3 SCR 854 : (2004) AIRSCW 2235 : (2004) 3 Supreme 151 is concerned, it is held by the Supreme Court that it is in limited sense the expression "commencement of an arbitration" qua "a notice of arbitration" assumes significance. It is held that section 21 of the 1996 Act provides as to when the arbitral proceedings would be deemed to have commenced. It is held that section 21 must be construed having regard to section 85(2)(a) of the 1996 Act and once it is so construed, indisputably the service of notice and/or issuance of request for appointment of an arbitrator in terms of the arbitration agreement must be held to be determinative of the commencement of the arbitral proceeding. In my view, the said judgment of the Supreme Court does not assist the case of respondent No. 1 but assist the case of the claimants.

29. The Supreme Court in the case of Voltas Limited Vs. Rolta India Limited, AIR 2014 SC 1772 : (2014) AIRSCW 1503 : (2014) 1 ARBLR 343 : (2014) 3 JT 197 : (2014) 2 SCALE 301 : (2014) 4 SCC 516 , has held that the notice under section 21 saves limitation. The Supreme Court in the case of State of Goa Vs. Praveen Enterprises, AIR 2011 SC 3814 : (2011) 3 ARBLR 209 : (2011) 112 CLT 659 : (2011) 8 JT 359 : (2011) 7 SCALE 131 : (2012) 12 SCC 581 : (2011) 10 SCR 1026 : (2012) AIRSCW 3879 , has held that the arbitral proceedings in respect of those disputes commenced on the date on which the request for the said disputes to be referred to arbitration was received by the respondent and only such disputes which were referred to in the said notice invoking arbitration agreement with a request to refer the same to arbitration, the arbitral proceedings commences and it would not apply to the counter claim. In my view the aforesaid two judgments of the Supreme Court squarely applies to the facts of this case. The claims in my view were not barred by law of limitation and the

learned arbitrator was right in rejecting the plea of limitation raised by respondent No. 1.

30. Insofar as the submission of learned counsel for respondent No. 1 that there is inconsistency in the award insofar as the issue of limitation is concerned, it has been urged by learned counsel for respondent No. 1 that on the one hand in the impugned award, the learned arbitrator has held that the issue of limitation was already concluded since the same was decided as an issue of jurisdiction under section 16 of the Arbitration Act as a preliminary issue and thus could not be reopened again and on the other hand it is held by the learned arbitrator in the said award dated 3rd December, 2012 that the contention of respondent Nos. 2 and 3 that in fact the firm did not stand dissolved on 20th February, 2009 but subsequently and therefore, the claim was not barred by law of limitation need not be gone into at that stage of determining the issue of limitation. A perusal of the finding rendered by the learned arbitrator on the issue of limitation in the impugned award and the observations made by the learned arbitrator in the award dated 3rd December, 2012 does not indicate any inconsistency as canvassed by learned counsel for respondent No. 1. A perusal of the award dated 3rd December, 2012, passed by the learned arbitrator clearly indicates that by the said award, the learned arbitrator has already rejected the plea of limitation holding that as per section 21 of the Arbitration Act, the arbitral proceedings had already commenced on the date of receipt of the notice dated 13th May, 2009 issued by the claimants and received by the respondents. In paragraph 10 of the said award, while considering the plea of respondent Nos. 2 and 3 that the firm did not stand dissolved by notice dated 20th February, 2009, the learned arbitrator clarified this issue that even assuming that the partnership firm would have stood dissolved by a notice dated 20th February, 2009, the claim was found to be within limitation and the stand of respondent Nos. 2 and 3 that the firm did not stand dissolved on 20th February, 2009 but dissolved subsequently and therefore, the claim was not barred by limitation, was not required to be gone into at that stage of determining the issue of limitation. In the impugned award, the learned arbitrator has rightly held that once the issue of limitation was already decided under section 16 of the Arbitration Act or once the issue is decided as a preliminary issue, the said issue stands concluded and cannot be reopened again. In my view, there is thus no inconsistency in the order passed by the learned arbitrator under section 16 and the award rendered by the learned arbitrator on the issue of limitation as canvassed by learned counsel for respondent No. 1.

31. The next submission of learned counsel for respondent No. 1 is that the learned arbitrator had relied upon the photocopies of various documents and also that such documents admittedly required payment of stamp duty and registration and were insufficiently stamped and unregistered.

32. A perusal of the award on this issue clearly indicates that the claimants had examined Mr. Karim Maredia, who was the partner of the firm at the relevant

time in 1977 and 1979 and was signatory to the various documents which were entered into between the partnership firm and M/s. Elite Enterprise. The said witness had produced photocopies of the supplementary agreement dated 30th July, 1977, which was entered into between M/s. Elite Enterprise and the suit firm. The said agreement recorded that the said M/s. Elite Enterprise was constructing a western wing of a building on a plot of land situate at the corner of Duncan Road and Bellasis Road bearing C.S. No. 290 (part) of Byculla Division. Under the said agreement, the suit firm had agreed to acquire from M/s. Elite Enterprise, part of ground floor, the entire first floor, second floor and third floor (partly constructed) together with terrace attached thereto and above the third floor and the car parking spaces on the ground floor and that the said premises shall have further amenities, convenience and facilities. In the said agreement it is also recorded that the suit firm shall be entitled to use the premises for running lodging house and rest house and that the firm shall be exclusively entitled to do on the said premises for themselves and for all the persons using the said premises as lodgers, borders, paying guests an servants and agents of the firm.

33. The said witness examined by the claimants also produced a photocopy of the agreement dated 1st August, 1979 entered into between M/s. Elite Enterprise and the suit firm. Under the said agreement, it was recorded that the suit firm had agreed to purchase the entire West Wing of the property known as Bait-ul Aman situate on a property which was more particularly described in the second schedule of the said agreement. The said witness also produced a photocopy of an agreement dated 1st December, 1979 entered into between the said M/s. Elite Enterprise and the suit firm, which was in respect of shop No. 16-A on the ground floor of the building constructed on the said property. The said witness had deposed in his evidence in respect of those three agreements and stated that the original agreement dated 30th July, 1977 was got in the hands/business premises of the suit firm. Respondent Nos. 2 and 3 admit those documents. The said witness was extensively cross-examined on those documents by respondent No. 1 through her learned counsel. The said witness was asked from where did he get the photocopies done. The witness replied that he got the photocopies from the shop in Dadar (West) and the said photocopies were taken from the original documents. The witness deposed that he had taken the photocopies from the originals in the year 2002. He also deposed that he himself had taken out the original documents from the cub-board, took the same and got them photocopied and thereafter put them back in the cup-board.

34. A perusal of the impugned award indicates that the learned arbitrator has considered the oral evidence of the witness examined by the claimant, including his cross-examination in which the witness had clearly deposed that he himself had taken out the photocopies from the originals. The said witness deposed about the existence and the contents of the said documents. The learned arbitrator accordingly marked those documents in evidence having been satisfied that the original documents were not in the custody of the claimants at the time

of recording oral evidence and thus permitted him to rely upon secondary evidence.

35. In my view, since respondent No. 1 did not raise any objection when the photocopies were tendered by the claimants in evidence and the witness examined by the claimants was subjected to extensive cross-examination, in my view there is no infirmity in the impugned award rendered by the learned arbitrator accepting the existence and contents of the secondary evidence produced by the claimants in the circumstances stated aforesaid. There is thus no substance in the submission of learned counsel for respondent No. 1 that the impugned award is in violation of principles of natural justice or in violation of the principles of Evidence Act. In my view, the objections that in the absence of any original documents not having been produced by the witness and the same could not be tendered in evidence ought to have been raised only when the said documents were tendered and not at the stage of hearing.

36. Insofar as the submission of learned counsel for respondent No. 1 that the documents were not registered and were not sufficiently stamped and thus could not have been marked as exhibits by the learned arbitrator is concerned, it is not in dispute that when the said documents were tendered by the witness examined by the claimant, no such objection was raised by respondent No. 1. The learned arbitrator marked those documents in evidence. Respondent No. 1 admittedly raised this objection only at the stage of hearing of this arbitration petition. In my view, since respondent No. 1 ought to have raised the said objection only when the said documents were tendered and not at the stage of hearing of the arbitral proceedings, the learned arbitrator rightly rejected this contention in the impugned award and in my view no interference with that part of the award is warranted.

37. Insofar as the submission of learned counsel for respondent No. 1 that the learned arbitrator could not have held that the firm had acquired the rights and interests in the ground floor, first floor, second floor and third floor terrace of the building known as M/s. Hotel Sagar and that the said property belonged to the husband of the first respondent is concerned, a perusal of the record indicates that though the claimants had produced various documents and had examined the witness in support of the plea that the said portion of the properties was acquired by the suit firm, respondent No. 1 did not produce any documents in respect of the plea that the said property belonged to the husband of respondent No. 1. At the time of arguing this petition, learned counsel for respondent No. 1 invited my attention to the photocopy of Gumasta license alleged to have been issued in the year 1962 in the name of KGN Trading and also to the photocopy of the document issued by the Municipal Corporation. Learned counsel submitted that those documents were relied upon by respondent No. 1 for the purpose of showing possession of the husband of respondent No. 1 in respect of the said property much prior to the date of execution of the partnership deed.

38. A perusal of the award indicates that the learned arbitrator has held that in a

dispute as regards the ownership of the property, once the person is held to be in possession, the burden of proving that he is not the owner is on the person, who affirms that he is not the owner. It is held by the learned arbitrator that the possession itself constitutes a limited title to the property, a title which is good cause to accept rightful owner. It is held that respondent No. 1 had not been able to bring any effective material save and except couple of documents on record, save and except the bare words of respondent No. 1 who in evidence clearly admitted that she was illiterate and had no knowledge of the affairs of her husband. The learned arbitrator also considered the deposition of the second witness examined by respondent No. 1 as regards the ownership of the husband of respondent No. 1, who admittedly deposed what respondent No. 1 had told him. The said witness had no personal knowledge in that regard.

39. Insofar as those two documents which were relied upon by respondent No. 1 are concerned, it is held by the learned arbitrator that respondent No. 1 herself had no personal knowledge of any documentation. She had produced through her son an extract from the records maintained by the office of the Senior Inspector, Shops and Establishment Department reflecting the entry dated 13th October, 1962. The learned arbitrator has rendered a finding on perusal of the said document that the same merely made a mention of a shop where the establishment of KGN Trading of Abdul Rahim Shaikh was running. The said entry of 1962 did not disclose any reflection of any ownership. It is held that the current premises were constructed in 1979 and therefore, the mention of any shop prior to the construction of the building itself was irrelevant. It is also held that the shop and establishment registration did not in any manner suggest any ownership of the premises where the establishment was being operated.

40. Insofar as the document which was alleged to be the extract from the register of the Municipal Corporation dated 12th October, 1970 regarding a purported application made by the husband of respondent No. 1 for putting up an office with mezzanine floor is concerned, it is held that the said application had been made under section 342 of the Bombay Municipal Corporation Act, 1888 which provided that any person who intends to make any alteration or repair to a building or to change an existing user should give a notice to the Commissioner of his intention to do so and the said extract does not prove that the person making such an application is the owner of the premises. The learned arbitrator held that those documents could not be related to the partnership property. It was the case of respondent No. 1 herself that the proposal to run the hotel was made in the year 1977 and the building in which the partnership properties were situated were also constructed thereafter. The learned arbitrator held that when the premises came into existence after 1977, reference to certain premises prior thereto was of no relevance whatsoever. It is held that though respondent No. 1 and her son gave evidence, there was no evidence whatsoever to prove that it was the husband of respondent No. 1 who had constructed the said building Bait-ul Aman. The learned arbitrator also considered the oral evidence of the son of respondent No. 1, who admitted in response to question

No. 61 that he did not have document under which his father acquired the title and that the documents based on which he stated that his father had rights in the said plot. The said witness further deposed that he had no personal knowledge as to how his father acquired the title in respect of the building where Hotel Sagar is situated. The learned arbitrator has rendered a finding that there was no material to show who carried out the construction and all the witnesses produced by respondent No. 1 had expressed their inability to answer any questions in that regard due to lack of knowledge. In my view, the findings recorded by the learned arbitrator are based on the documentary as well as oral evidence and such findings of fact are not perverse, no inference with such findings of fact is permitted under section 34 of the Arbitration Act.

41. Insofar as the dispute as to whether the basement belonged to the suit firm or not, the learned arbitrator has rendered a finding that no proof of rent having been paid or any rent receipts had been produced by the witnesses examined by the claimants. It is held that the leave and license agreement produced on record by the claimants did not in any manner establish that it was the firm which was the owner of the premises. No such mention was made in the leave and license agreement. The learned arbitrator accordingly rejected the claim of the claimants regarding the ownership or any other right of the suit firm in the basement. In my view, the findings rendered by the learned arbitrator are based on an appreciation of evidence and are not perverse and thus no interference is permissible under section 34 of the Arbitration Act.

42. Insofar as the other judgments relied upon by respondent No. 1 are concerned, in my view, none of those judgments are relevant for the purpose of deciding these petitions. The judgment relied upon in case of Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., AIR 2003 SC 2629 : (2003) 2 ARBLR 5 : (2003) 3 CompLJ 1 : (2003) 4 JT 171 : (2003) 4 SCALE 92 : (2003) 5 SCC 705 : (2003) 44 SCL 89 : (2003) 3 SCR 691 : (2003) 2 UJ 1035 does not assist the case of respondent No. 1 but assist the case of the claimant.

43. I therefore pass the following order:-

a). Arbitration Petition No. 1683 of 2014 and Arbitration Petition No. 456 of 2015 are devoid of merits and are accordingly dismissed.

b). In view of disposal of Arbitration Petition Nos. 1683 of 2014 and 456 of 2015, Arbitration Petition No. 646 of 2015 does not survive and is accordingly disposed of.

c). There shall be no order as to costs.

At this stage, Mr.Balsara, learned counsel appearing for the petitioners in Arbitration Petition No.1683 of 2014 applies for continuation of the ad-interim order passed by this court dated 24th January, 2011 and continued from time to time to enable the petitioners to apply for execution of the impugned award. Ad-interim order granted by this court as aforesaid to continue for a period of four weeks to enable the petitioners to take appropriate steps in execution of the impugned award. Petitioner would be at liberty to apply for continuation of the ad-interim order further before executing court.

