
(1993) 02 BOM CK 0043

In the Bombay High Court

Case No : Arbitration Petition No. 53 of 1991 alongwith I.A. No. 184 of 1991
with Suit No. 3207 of 1992

Ratanchandra and another

APPELLANT

Vs

Mrs. Suruchichand and others

RESPONDENT

Date of Decision : 12-02-1993

Acts Referred:

Arbitration Act, 1940 — Section 20, 32, 33, 34
Evidence Act, 1872 — Section 112, 114, 50
Hindu Minority and Guardianship Act, 1956 — Section 6

Citation : (1993) 3 BomCR 76

Hon'ble Judges : Jhunjhunuwala, J

Bench : Single Bench

Advocate : Shri Kathawala, instructed by M/s. Ambubhai and Dhiwanji, for the Appellant; Shri P. Samdani and Shri C.D. Patel, instructed by M/s. Nandlal Kothari, Sabir and P. Sancheti, for the Respondent

Judgement

Jhunjhunuwala, J.—The Arbitration Petition No. 53 of 1991 (herein referred to as "the Petition") has been filed by Ratanchandra and Gopichandra, two of the sons of one Mahesh Chand for declaration that no valid agreement of arbitration between Petitioners and Respondents 1 to 32 therein subsists and that the agreement dated 3rd January, 1989 is illegal void and unenforceable in law. Further declaration to the effect that the orders passed by this court in Arbitration suit No. 197 of 1989 and Arbitration Petition No. 16 of 1989 are not binding on the Petitioners. Interim Petition No. 184 of 1991 has been taken out by the petitioners in the said Arbitration Petition No. 53 of 1991 for interlocutory reliefs as prayed for therein. On 20th June, 1989, the petitioners had through their mother Jamunabai filed a suit, being OS Suit No. 1016 of 1989 in the court of Additional Judge, City Civil Court at Hyderabad, seeking a declaration that the said agreement dated 3rd January, 1989 is illegal and unenforceable in law. The said suit filed by the Petitioners in the said Arbitration Petition No. 53 of 1991 has been transferred to this court by the orders of the Hon"ble Supreme Court of

India dated 4th April. 1990 and numbered as Suit No. 3207 of 1992 (hereinafter referred to as "the suit"). Since parties to above proceedings are common and the proceedings involve common facts and common points of law, the same are being disposed of by a common judgment.

2. One Naresh Chand (since deceased), Dr. Naresh Chand and Mahesh Chand have been real brothers. Ramesh Chand died in a car accident at the age of 47 years on 18th December, 1986. The 1st Respondent in the Petition, who is 1st Defendant in the Suit is the widow of the said Ramesh Chand. The Respondents 2 and 3 in the Petition who are Defendants 2 and 3 respectively in the suit, are the daughters of the said Ramesh Chand. The Respondents 1, 2 and 3 in the Petition are hereinafter jointly referred to as "Ramesh Chand Group". Dr. Naresh Chand is Respondent 19 in the Petition and Defendant No. 19 in the suit. The Respondents 20, 21 and 22 in the Petition who are Defendants 20, 21 and 22 respectively in the suit are the wife and minor children respectively of the said Dr. Naresh Chand. The Respondents 19, 20, 21 and 29 in the Petition are hereinafter jointly referred to as "Naresh Chand Group". Mahesh Chand is 4th Respondent in the petition and 4th Defendant in the suit. The petitioners and Respondents 5 to 18 in the petition, who are plaintiffs, and Defendants 5 to 18 respectively to the suit, are the children of the said Mahesh Chand out of whom, the petitioners and Respondents 17 and 18 in the petition, who are plaintiffs and Defendants 17 to 18 respectively in the suit, have been minors at the material time. The petitioners and respondents 5 to 18 in the petition are hereinafter jointly referred to as "Mahesh Chand Group". The Respondents 33 and 34 in the petition are the learned Arbitrators whereas the Respondents 23 to 32 in the petition who are Defendants 23 to 32 respectively in the suit, are companies incorporated and registered under the Companies Act, 1956 whose businesses alongwith partnership firms and association of persons were till 18th December, 1986 carried on by one or more of the members of the said three groups. The said three groups also had controlling interest in Western Indian Glass Works Ltd., a company having its office at G-11, HIDC Industrial Area, Village Namla, Taluka Panvel, District Raigad, Maharashtra, hereinafter referred to as "SIG". The said Ramesh Chand Group had 88% share in the business of the said SIG. There is a property at Hyderguda, Hyderabad which belongs to Respondent No. 31 in the Petition who is Defendant No. 31 in the suit. There is an agricultural farm known as "Shivbaug" at Hyderabad which belongs to Respondent No. 24 in the Petition who is Defendant No. 24 in the suit.

3. After the demise of the said Ramesh Chand, disputes arose between the said Ramesh Chand Group on the one hand and the said Naresh Chand Group and Mahesh Chand Group on the other band in relation to the said businesses as also in relation to the 28% share of the said Ramesh Chand Group in the business of the said WIG. The said Ramesh Chand Group filed a company Petition being Company Petition No. 49 of 1988 for winding up of Mahalaxmi Glass Works Pvt. Ltd. the Respondent No. 23 in the Petition who is Defendant No. 23 in the suits and also took out Company Application No. 28 of 1988 therein for interim reliefs.

On 14th September, 1988, the said Company Petition No. 49 of 1988 was admitted and was ordered to be advertised. The said Mahalaxmi Glass Works Pvt. Ltd. filed an appeal being Appeal No. 1205 of 1988 against the said order dated 14th September, 1988. The said appeal was ultimately withdrawn on 31st January, 1989.

4. In order to preserve family peace and harmony and to resolve all disputes and differences between the said three groups and to avoid future disputes, the said three groups arrived at a family arrangement whereby the said Ramesh Chand Group agreed to go out of the said businesses and sever its connection with the said businesses, companies, firms and association of persons and the said WIG and to receive the value of their 1/3rd share therein including in the said Hyderabad property and their interest to the extent of 28% in the business of the said WIG. "However, the said three groups were unable to" agree upon the value of 1/3rd share of the said Ramesh Chand group in the said businesses, in the said Hyderabad property and of their 28% interest in the business of the said WIG as also to the mode, manner and time of payment thereof and also as to whether the payment thereof has to be made with or without interest. In order to resolve these disputes, the parties agreed to refer the same to the arbitration of Chief Justice Mr. P. N. Bhagwati (Retired) and Mr. Justice V. D. Tulzapurkar (Retired) (hereinafter referred to as "the learned Arbitrators"), and an Agreement dated 3rd January, 1989 (hereinafter referred to as "the said agreement") was executed. A copy of the said agreement is annexed and marked as Exhibit A to the Petition. The said agreement was a part of the family arrangement and was signed by Respondent No. 4 in the Petition for himself and on behalf of the Petitioners as Respondents 17 and 18 therein as their father and guardian. Similarly, the said agreement was signed by the Respondents No. 19 in the Petition for himself and on behalf of Respondents 21 and 22 therein as their father and guardian.

5. The relevant clauses for the purposes of those proceedings, of the said agreement are 4, 5, 10, 12, 14, 15, 16, 17, 18 and 19, which read as under :

"(4) The parties hereto agree to refer and hereby refer to the summary arbitration of Mr. Justice P. N. Bhagwati (Retired) and Mr. Justice V. D. Tulzapurkar (Retired), the following issues and all other connected and incidental issues :

(a) The determination of the value of the 1/3rd share of the Ramesh Chand Group in aforesaid business, including the Hyderabad properties and the value of the interest to the extent of 28% of the Ramesh Chand Group in the business of WIG.

(b) The aforesaid valuation shall be made as on the Relevant Date. The parties shall be at liberty to urge their respective contentions in regard to the mode and manner of such valuation, including the question as to how, in what manner and to what extent the claims, liabilities and demands in respect of the aforesaid

businesses including the Hyderabad properties pertaining to the period prior to the Relevant Date which may be crystallised or raised subsequent to the Relevant Date are to be valued.

(c) Whether any interest and if so, at what rate, may be awarded as from the Relevant Date and/or pendente lite and/or from the date of the award till realisation.

(d) The determination of the mode, manner and time of payment of the aforesaid value of the 1/3rd share of the Ramesh Chand Group in the aforesaid businesses including the Hyderabad properties and the value of the interest to the extent of 28% of the Ramesh Chand Group in the business of WIG, and interest, if any, as determined by the learned Arbitrators and by whom.

(5) It is a term of this Reference that separation of the Ramesh Chand Group from the aforesaid companies, firms and AOPs and WIG will become effective only on receipt in full of the value of its aforesaid 1/3rd share and the value of the interest to the extent of 28% of the Ramesh Chand Group in the business of WIG and interest, if any, as may be determined and awarded by the Arbitrators.

(10) The arbitrators shall make and publish their award within six months from the date of entering upon the reference under this agreement. The arbitrators shall have power to extend the said period by consent of the persons representing the parties as mentioned in clause 20 below.

(12) The parties hereto agree to obtain a consent order of reference to arbitration from the High Court of Bombay u/s 20 of the Arbitration Act, 1940 in terms of this agreement and on such order of reference being made, the Ramesh Chand Group agrees and undertakes to withdraw Company Petition No. 49 of 1988 and the Company Application No. 35 of 1988 and have the orders passed therein vacated.

(14) The party of the 11th part shall repay the following deposits, together with accrued interest thereon, to the Ramesh Chand Group in the following manner :

(a) Rs. 2 lakhs to Suruchi Chand on or before 31st December, 1988;

(b) Rs. 2 lakhs to Baloni Chand on or before 31st January, 1989;

(c) Rs. 2 lakhs to Shivani Chand; and

(d) Rs. 1.50 lakhs to Ramesh Chand Group representing the deposit of the deceased Ramesh Chand, both to be paid on or before 28th February, 1989.

15. Until the payment in full to Ramesh Chand Group of the value of its one-third share in the said businesses, including the said Hyderabad properties and the value of the interest to the extent Of 28% of the Ramesh Chand Group in the business of WIG and the interest, if any, awarded thereon. Saloni Chand shall continue to be employed as an Executive Officer and to receive the present salary from the party of the 4th Part and the Party of the 11th Part and shall

enjoy all the perquisites that are presently given and made available by the parties of the 4th Part and the 11th part. So far as the perquisite by way of the telephone facility at the residence is concerned the expenses shall continue to be payable in the same manner as at present subject to the limit of Rs. 5,000/- per month in respect of all the telephones at the residence of Saloni Chand.

(16) It is agreed that the Ramesh Chand Group shall be paid by the parties of the 2nd to the 13th Part of any one or more of them in the following manner :

(a) Rs. 2,75,000/- to be paid on or before 31st December, 1988;

(b) Rs. 50,000/- to be paid on or before 31st December, 1988;

(c) Rs. 1,50,000/- to be paid on or before 15th January, 1989;

(d) Rs. 1,50,000/- to be paid on or before 15th April, 1989;

(e) Rs. 1,50,000/- to be paid on or before 15th July, 1989;

(f) Rs. 1,00,000/- to be paid on or before 15th October, 1989;

It is agreed that the aforesaid amounts shall be paid to M/s. Bachubhai Munim & Co. for and on behalf of the Ramesh Chand Group.

(17) From December, 1989 the parties of the 2nd to the 13th part of any one or more of them shall pay a sum of Rs. 50,000/- per month which sum shall be paid on or before the 15th of every month and the first of such payments shall be made on or before 15th December, 1989 and the subsequent payments on or before the 15th of every succeeding month thereafter to the Ramesh Chand Group in the manner more particularly set out hereinafter until the date of the final award. As from the date of the final award a sum of Rs. 50,000/- per month shall be paid on or before the 15th of every month to the Ramesh Chand Group until the value of the one-third share in the said business including the Hyderabad properties and the interest to the extent of 28% of the Ramesh Chand Group in the business of WIG with interest thereon that may be awarded by the Arbitrators is paid in full and the question as to which of parties shall be liable to pay the same shall be decided by the arbitrators; Provided that the arbitrators shall decide as to whether and in what manner and to what extent the liability to pay Rs. 50,000/- salary, perquisites and dividends shall be reduced on part payments from time to time towards the amount of the final award together with interest, if any, awarded. The said monthly sums of Rs. 50,000/- shall be paid to M/s. Bachubhai Munim & Co., on behalf of the Ramesh Chand Group. The said sum of Rs. 50,000/- shall belong to and be divided equally between Suruchi Chand, Saloni Chand and Shivani Chand.

18) The said sum of Rs. 9,75,000/- as also the amount of Rs. 50,000/- per month as also the amount of salaries. Perquisites to Miss Saloni Chand and dividends on shares paid or made available to any members of the Ramesh Chand Group after the relevant date, shall be adjusted towards interest awarded, if any. If no interest is awarded then in respect of the value of their one-third

share in the said businesses including the Hyderabad properties and their interest to the extent of 28% in the business of WIG the Ramesh Chand Group will be entitled to retain the payments made under clauses 15, 16 and 17 herein and the aforesaid dividends in addition to the amount that any be determined by the Arbitrators to be the value thereof.

(19) It is hereby agreed that from the date of this Agreement, none of the members of the Ramesh Chand Group shall interfere in the management of the said Companies, Partnership Firms, AOPs, and WIG".

6. In the month of January 1989, Respondents 1, 2 and 3 in pursuance of the said agreement and while acting upon clause 12 thereof filed an Arbitration suit being Arbitration Suit No. 197 of 1989 against the petitioners and other Respondents in the Petition in this court for filing the said agreement in this court and for an order of reference to the learned Arbitrators being the arbitrators appointed by the parties to the said agreement. In the said Arbitration Suit No. 197 of 1989, the Respondents 1, 2 and 3 in the Petition had applied for appointment of Respondents No. 4, being the father and guardian of the minor Petitioners and Respondent 17 and 18 in the Petition as guardian ad litem of the said minors. In the said proceedings Respondent No. 4 in the Petition affirmed and filed an affidavit, inter alias, admitting that Respondent No. 4 was the father and natural guardian of the minor Petitioners and Respondents 17 and 18 and that he had signed the said agreement also in his capacity as the father and natural guardian of the Petitioners and Respondents 17 and 18 in the Petition. It was further stated in the said affidavit that it was in the interest of the said minors that the disputes which had arisen amongst the said three groups be referred to the learned Arbitrators and orders accordingly the passed by the court u/s 20 of the Arbitration Act, 1940 (for short "the Act") in the said Arbitration Suit. The Respondent No. 4 in the petition further stated in the said affidavit that he was agreeable to be appointed as guardian ad litem of the said minors. On 31st January 1989, an order was made by this court whereby Respondent No. 4 in the petition was appointed as guardian ad litem of the said minors in the Said Arbitration Suit No. 197 of 1989. The Respondents 1, 2 and 3 in the petition has also filed an Arbitration Petition No. 16 of 1989. In the said Arbitration Petition No. 16 of 1989, the said Respondents 1, 2 and 3 had also applied for appointment of Respondent No. 4 being the father and natural guardian of the Petitioners and Respondents 17 and 18 in the Petition as guardian ad litem of the said minors. In the said proceedings also the said Respondent No. 4 had filed a Similar affidavit which was filed in the said Arbitration Suit No. 197 of 1989. On 31st January, 1989, an order was made by this court whereby the Respondent No. 4 in the Petition was appointed as guardian ad litem of the said minors also in the said Arbitration Petition No. 16, of 1989.

7. On 27th January, 1989 another affidavit was filed by Respondent No. 4 in the Petition wherein Respondent No. 4 has admitted that be had signed the said

arbitration agreement as father and guardian of the said minor Petitioners and Respondents No. 17 and 18 in the Petition and that the interest of the said minors would not be adversely affected as the said Respondent No. 4 was appointed as guardian ad litem of the said minors. The said Respondent No. 4 has further stated in the said affidavit that it was in the interest of the said minors that the court should pass the order in terms of the consent terms arrived between the parties.

8. On 31st January, 1989, by separate orders, this Court appointed the said Respondent No. 4 as guardian ad litem of the Petitioners and Respondents No. 17 and 18 in the Petition, for the purposes of the said Arbitration Suit No. 197 of 1989 the said Arbitration Petition No. 16 of 1989 as also for the arbitration proceedings before the learned Arbitrators and certified the compromise recorded in the consent terms filed in the said Arbitration Petition No. 16 of 1989 for the benefit of the minors viz, the Petitioners, the Respondents 17, 18, 21 and 22 in the Petition. The Respondent No. 19 in the Petition was appointed as guardian ad litem of Respondents 21 and 22 in the Petition in the similar manner in which the said Respondent No. 4 was appointed as guardian ad litem of Petitioners and Respondents 17 and 18 in the Petition.

9. On 31st January, 1989 a decree was passed by this court in the said Arbitration Suit No. 197 of 1989 in terms of prayers (a) and (b) thereof and accordingly, the said arbitration agreement was ordered to be filed in his court and order of reference was made to the learned Arbitrators. The learned Arbitrators were directed to make and publish their award within six months from the date of entering upon the reference. As provided in the said consent terms filed in the Petition, the Appeal No. 1205 of 1988 preferred against the order of admission in the said Company Petition No. 49 of 1988 was withdrawn on 31st January, 1989 itself. The 1st Petitioner in the Petition has attained majority on 12th January, 1990. The 2nd Petitioner in the Petition has attained the majority on 30th September, 1982.

10. On 13th February, 1989 the learned Arbitrators entered upon the reference and held a meeting in which the learned Arbitrators gave certain directions including directions appointing one Srinivasan of M/s. V. Shankar Iyer & Co. as an expert to advise and assist the learned Arbitrators for the purpose of determining in the first instance as to what should be the basis of the valuation of the said share of the said Ramesh Chand Group. On 11th April, 1989 another meeting was held before the learned Arbitrators. At both the said meetings held before the learned Arbitrators, the said Mahesh Chand Group, including the said minors viz., the Petitioners and Respondents 17 and 18 in the Petition, were represented by counsel and solicitors. Between 28th March, 1989 to 19th April, 1989 meetings were held by the said Srinivasan for the purpose of determining in the first instance as to what should be the basis of valuation of the share of the said Ramesh Chand Group. In these meetings the said Mahesh Chand Group, including the said minors were represented by the Counsel, solicitors and

chartered accountants and also by the said Mahesh Chand himself.

11. On 20th June, 1989, the Petitioners in the Petition through their mother Jamunabai filed suit, being Suit No. 1016 of 1989 in the City Civil Court at Hyderabad. In the said Suit No. 1016 of 1989 (hereinafter referred to as "the said Hyderabad Suit") declaration is sought to the effect that the said agreement is illegal, void and unenforceable at law Various other reliefs are also claimed. The said Hyderabad suit has, as aforesaid, been transferred to this court. In the said Hyderabad suit, the Respondents to 1 to 3 in the Petition has made an application, being Application No. 915 of 1989 u/s 34 of the Arbitration Act, 1940 for stay of the proceeding thereof in view of existence of the said arbitration agreement amongst the parties. The said application was, however, rejected on 15th December, 1989 as per the order passed by First Additional Judge, City Civil Court Hyderabad.

12. The Petitioners in the Petition, who Plaintiffs in the suit, have challenged the validity of the said Agreement in the Petition as well as in the suit on same and/or similar grounds, viz.

(1) that since the said Mahesh Chand and the said. Jamunabai were not married to each other, the Petitioners in the Petition, who are Plaintiffs in the suit, are illegitimate children of the said Mahesh Chand and the said Jamunabai and as such, u/s 6(b) of Hindu Minority and Guardianship Act, the said Jamunabai and not the said Mahesh Chand had legal capacity and authority to represent them as their natural guardian during their minority and as the said agreement is not executed by the said Jamunabai as mother and natural guardian of the said minors, though executed by the said Mahesh Chand as their father and guardian, is void ab initio and unenforceable.

(2) that the said Mahesh Chand executed the said agreement in utter disregard of the interest of the Petitioners in the Petition, who are Plaintiffs in the suit, purporting to act as their guardian when terms of the said agreement are manifestly adverse to their interest.

13. On behalf of Respondents 1, 2 and 3 in the Petition, the 2nd Respondent therein has filed her affidavit in reply to the Pitition and while staling the facts therein which according to her are true and correct, has denied the false and baseless allegations of the Petitioners, Dr. Naresh Chand, the 19th Respondent in the Petition has also filed an affidavit basically dealing with contents of the affidavit of the 2nd Respondent. None of the other Respondents has filed any affidavit in reply to the Petition.

14. In the suit. Defendants 1, 2 and 3 have filed their Written Statement. The said Mahesh Chand, the 4th Defendant in the suit has also filed his Written Statement. The Defendants 19, 20, 21 and 22 and so also the Defendants 23 to 32 have filed their Written Statements in the suit. None of the other Defendants has filed written Statements in the Suit.

15. The Defendants 1, 2 and 3 in the suit (hereinafter referred to as "those Defendants") in their Written Statements, while denying the allegations of the Plaintiff's therein, have inter alia, contended that :

(1) by reason of decree passed by this court on 31st January, 1989 in the Arbitration Suit No. 197 of 1989 the said agreement has been ordered to be filed in this court u/s 20 of the Act and Order of Reference to learned Arbitrators has been made and hence the suit to challenge the said agreement is misconceived and not maintainable in laws;

(2) the suit to challenge the validity of the said agreement is not maintainable in view of Section 32 read with Section 33 of the Act and this court has no jurisdiction to entertain and try the same;

(3) the said Naresh Chand Group and the said Mahesh Chand Group while acting in collusion and in an attempt to scuttle the arbitration proceedings pending before the learned Arbitrator have put up the Plaintiffs through the said Jamunabai to file the suit on the basis of false and fraudulent allegations and that the Plaintiffs are not entitled to any relief whatsoever in the suit;

(4) the said agreement which is a part of the family arrangement was properly legally and Validly signed by the said Mahesh Chand, the 4th Defendant in the suit for himself and on behalf of the Plaintiffs and Defendants 17 and 18 in the suit as their father and guardian as the said minors at the material time were under the guardianship of 4th Defendant and also as head of the family of Mahesh Chand Group to which the Plaintiffs and Defendants 17 and 18 being and as such, is valid and is neither void ab initio nor unenforceable;

(5) neither the plaintiffs nor either of Defendants 17 and 18 have been under guardianship of the said Jamunabai and that the said Jamunabai was not their natural guardian;

(6) the said Jamunabai is the wife of the 4th Defendant and the 4th Defendant being father of the Plaintiffs and Defendants 17 and 18 was, at the material time when the said agreement was executed their natural guardian and was vested with authority and legal competency to represent them and enter into the said agreement on their behalf;

(7) the terms of the said agreements are for the benefit of the Plaintiffs and Defendants 17 & 18 and not adverse or detrimental to their interest.

Notwithstanding the provisions of the said agreement and Order dated 31st January, 1989 passed by this court in Arbitration Petition No. 16 of 1989, these Defendants have also stated in the said Written Statement that they would not claim any amount from the Plaintiffs and/or Defendants 17 and 18 either under the said agreement or under the said Order of this court or in the said arbitration proceedings and as such, the Plaintiffs being not adversely affected by the said agreement, Order or arbitration proceedings, are not entitled to maintain or continue the suit.

16. The 4th Defendant in his written Statement has contended that he was not married to the said Jamunabai and in the circumstances, the said Jamunabai would be natural guardian of the Plaintiffs and Defendants 17 and 18 during their minority as per the provisions of Hindu Minority and Guardianship Act.

17. The Defendants 19, 20, 21 and 22 in their Written Statement have contended that to their knowledge, the said Mahesh Chand is not married to the said Jamunabai. The Defendants 19, 20, 21 and 22 have further contended that in the event of it being held by this court that the said agreement is valid, the said agreement should be declared void as against all the parties thereto.

18. The Defendants 23 to 32 in their Written Statement have also contended that in the event of this court holding that the said agreement is void, this court should declare the same as void as against all parties thereto,

19. On the pleadings, the following issues between the plaintiffs and Defendants 1, 2 and 3 in the suit have been framed and settled :

(1) Whether the Agreement has merged in the decree/order dated 31st January, 1989 and in view of the said decree/order the present suit challenging the said agreement and claiming an injunction in respect of the arbitration is misconceived and not maintainable as stated in para 1(a) of the Written Statement of Defendants No. 1 to 3.

(2) Whether in view of Sections 32 and 33 of the Indian Arbitration Act, the suit is not maintainable as stated in para 1(b) of the Written Statement of Defendants No. 1 to 3.

(3) Whether the court of the Additional Judge, City Civil Court, Hyderabad or this Hon"ble Court has jurisdiction to entertain and try the suit.

(4) Whether in respect of matters relating to Defendants No. 30 and 32 and in respect of reliefs claimed in favour of Defendant No. 30, the Plaintiffs have no cause of action, the plaint discloses no cause of action and the suit is not maintainable as stated in para 1(d) of the Written Statement of Defendants No. 1 to 3.

(5) Whether the suit is false, fraudulent and collusive and is a gross abuse of the process of the court as stated in para 1(c) of the Written Statement of Defendants No. 1 to 3.

(6) Whether the mother of the Plaintiffs was the natural guardian of the Plaintiffs as alleged in para 3 of the Plaint.

(7) Whether the Agreement dated 3.1.1989 is void and unenforceable as alleged in para 7 of the plaintiff.

(8) Whether the terms of the said Agreement are adverse to the interests of the minor Plaintiffs as alleged in paras 8 and 10 of the Plaint.

(9) Whether the Plaintiffs could not validly be made parties to the said

Agreement as alleged in para 9 of the Plaintiff.

(10) Whether the Agreement was a part of the family arrangement arrived at between the Ramesh Chand Group, Harish Chand Group and Mahesh Chand Group and the same was executed by Defendant No. 4 as the head of the family of the Mahesh Chand Group to which the Plaintiffs belong and accordingly the same is binding on the Plaintiffs as stated in paragraph 24 of the written Statement of Defendants No. 1 to 3.

(11) Whether the Plaintiffs will not be adversely affected by the said Agreement, order or Arbitration proceedings in view of what is stated in para 24 of the Written Statement of Defendants No. 1 to 3 and are therefore not entitled to and have no locus stand to maintain or continue the present suit.

(12) Whether the Agreement is vitiated for the reasons alleged in para 11 of the Plaintiff.

(13) Whether the Agreement is contrary to the provisions of the Companies Act, opposed to public policy and is void and enforceable for the reasons alleged in para 12 of the Plaintiff.

(14) Whether the payments aggregating to Rs. 7,25,000/- by Defendant No. 30 are deemed to be amounts advanced as loans to Defendants No. 4 to 19 as alleged in para 13 of the Plaintiff.

(15) Whether the Agreement was brought into existence only to defeat the interests of the minors and ease their loss as alleged in para 14 of the Plaintiff.

(16) Whether the plaintiffs will suffer irreparable loss and injury if Defendants No. 1 to 22 are allowed to proceed with the arbitration as alleged in para 18 of the Plaintiff.

(17) Whether having regard to the facts and circumstances the Plaintiffs should not be granted the reliefs claimed in the suit which are discretionary as stated in para 24 of the Plaintiff.

(18) What relief, if any, the Plaintiffs are entitled to."

20. As between the Plaintiffs and Defendant No. 4, Mrs. Nanavati, the learned Counsel appearing for 4th Defendant, has made a statement that no separate issues are required to be raised or settled, Mr. Bookwala, the learned Counsel appearing for Defendants 5 to 18 has also stated that no separate issues are required to be raised or settled between the Plaintiffs and Defendants 5 to 18. Mr. Zaiwala, the learned Counsel appearing for Defendants 19 to 32 has also stated that no separate issues between the Plaintiffs and Defendants 19 to 32 are required to be raised or settled

21. Initially when the Petition was taken up for hearing Mr. Kathawala, the learned Counsel appearing, for the Petitioners so also Mr. Zaiwala, the learned Counsel appearing for Respondents 19 to 32 stated that the Petition cannot be

disposed of merely on affidavits and oral evidence should be recorded. I find no substance in this submission. Firstly, the Petition being u/s 33 of the Act, unless the Court deems it just and expedient, is to be decided on affidavits. In the case of ONGC v. Offshore Enterprises (Arbitration Petition No. 210 of 1989). Dhanuka J. of our court in his judgment dated 24th February 1992 has held that the Arbitration Act would be totally defeated if every application is set down for recording of oral evidence merely because some sort of allegations are made by the Petitioners in the Petition in a strong language. He has further held that the court has to address itself to the question whether the court deems it just and convenient to dispense with the normal rule of trying the petition on affidavits. Secondly, Mr. Kathawala, Mr. Zaiwala so also Mrs. Nanavati and Mr. Bookwala have in terms stated that their respective, clients do not desire to lead any oral evidence. They have further stated that if Respondents 1 to 3 in the Petition would lead oral evidence, Respondents 4 to 32 reserve their right to lead oral evidence in rebuttal. Respondents 1 to 3 have also chosen not to lead any oral evidence in the Petition. Hence, no question of recording oral evidence in the Petition even arose. Moreover, the 4th Respondent; though present in court, at the time of hearing of the Petition, has chosen not to examine himself and lead oral evidence. In the suit also, the parties hereto have made similar statements that no oral evidence is to be recorded,

22. Mr. Kathawala for the Plaintiffs in the suit has stated that the documents being Exhibits A1 to A11 and B1 to B8 which are already on record as Exhibits in the proceedings of IA No. 915 of 1989 taken out in the said Hyderabad Suit (Hyderabad Suit No. 1016 of 1989) be marked as exhibits in the suit. Mr. Kapadia, the learned Counsel appearing for Defendants 1 to 3, has stated that he was not insisting on the formal proof of any of the documents marked as Exhibits A1 to A11 and B1 to B8 in the proceedings of said IA No. 915 of 1989. He further stated that xerox copies of the said exhibits produced by the Plaintiffs in the proceedings of said IA No. 915 of 1989 may be taken in evidence in the suit subject, however, to proof of the truth of the contents thereof. Mr. Kapadia further stated that the fact of much finding as recorded in the said Exhibits being given would not be challenged by him. Mr. Zaiwala, Mrs. Nanavati and Mr. Bookwala stated that they had no objection to the said procedure being followed. Accordingly, the xerox copies of the said documents which have been marked as Exhibit A1 to A11 and B1 to B8 in the proceeding of said IA 915 of 1989 in the said Hyderabad suit have been marked as Exhibit A1 to A11 and B1 to B8 respectively in the suit subject to the above statements agreed amongst the Counsel appearing in the suit. The objection earlier taken by Mr. Sathe, the learned Counsel also appearing for Defendants 1 to 3 along with Mr. Kapadia, for admission in evidence of the documents marked as Exhibit X1 to X3 was withdrawn and accordingly, the said documents were marked as Exhibits C, D and E respectively in the suit. No documentary evidence has been tendered on behalf of Defendants 1 to 3. Similarly, no documentary evidence has been tendered on behalf of Defendants 4 to 32. Mr. Nanavati made a statement that

the Defendant No. 4 has also not leading oral evidence in the suit.

23. The basic question which arise for consideration in the Petition as well as in the suit are two.

(1) Whether the said Agreement is binding on the Plaintiffs in the suit who are the Petitioners in the petition, the Plaintiffs/Petitioners at the material time of execution thereof being minors and they having opted to remain outside the said Agreement on attaining majority ? and

(2) If the said Agreement is held to be void as against the Plaintiffs/Petitioners, whether the said Agreement is also void as against Defendants 4 to 32/ Respondents 4 to 32.

According to Mr. Kathawala, Mrs. Nanavati, Mr. Bookwala and Mr. Zaiwala, the said Agreement is not binding on the Petitioners in the Petition and Plaintiffs in the suit since the said Mahesh Chand, their father who signed and executed the said Agreement on their behalf had no legal capacity to sign and execute the same on their behalf, he being not their natural guardian since their mother, the said Jamunabai was not married to him. In their submission, in the facts of the case, the said Jamunabai being the mother of the Petitioners in the Petition and Plaintiffs in the suit was their natural guardian u/s 6(b) of the Hindu Minority and Guardianship Act and she having not signed and executed the said Agreement on their behalf, the same is void ab initio and not binding on them. Mr. Bookwala and Mr. Zaiwala have further submitted that on the said Agreement being held to be void ab initio qua the minor Petitioners/Plaintiffs, the same would be void also qua the other Respondents/Defendants, being inseverable.

24. It is an admitted position that the said Agreement has been signed by the said Mahesh Chand the 4th Respondent in the Petition/4th Defendant in the suit on behalf of the Petitioners in the Petition and Plaintiffs, in the suit as their father and guardian. According to Mr. Kathawala, Mrs. Nanavati, Mr. Bookwala and Mr. Zaiwala since the said Mahesh Chand was not married to the said Jamunabai, to Petitioners in the Petition who are Plaintiffs in the suit are illegitimate children of the said Mahesh Chand and as such the said Jamunabai being their mother was their only natural guardian under the provisions of Section 6(b) of the Hindu Minority and Guardianship Act. It has also been submitted on their behalf that both the said Mahesh Chand and the said Jamunabai have on affidavits denied that they were married to each other. It is also submitted on their behalf that there cannot be presumption of legitimacy in respect of the Petitioners/Plaintiffs in the facts and circumstances of the case and the burden of proving negative did not lie on the Petitioner/Plaintiffs. Since the Respondents 1 to 3 in the Petition who are Defendants I to 3 in the suit were asserting the fact of marriage between the said Mahesh Chand and the said Jamunabai, it was submitted by Mr. Kathawala, Mrs. Nanavati Mr. Bookwala and Mr. Zaiwala that the burden of proving the marriage between the said Mahesh Chand and the said Jamunabai was on the said Respondents/Defendants. Reliance has been placed on Phipsan

on Evidence, where it is stated that the burden of proof rests upon the party whether Plaintiff or Defendant, who substantially asserts the affirmative of the issue. Reliance has also been placed on the case of Ch. Kanhaiya Rut v. Mr. Ram Der Kuer (Rep. In AIR 1944 Oud 162 where it has been held as under :

"Where a Plaintiff claims to recover property as the son of any person by his lawfully married wife and the Defendant denies that the wife ever gave birth to the child and sets up that the Plaintiff was the son of a woman other than the lawfully married wife, the onus of proof is upon the person who claims to show that the lawfully wedded wife gave birth to him, before invoking the presumption in Section 112. There is no presumption in favour of legitimacy without laying the foundation for it u/s 112 mainly that a valid marriage took place between the parents."

Mr. Kapadia has submitted that in the facts of the case it is not the case of the proof of negative but that since the Petitioners/Plaintiffs assert that they are illegitimate children of the said Mahesh Chand, the burden of proof of the assertion of the said fact lies on them. He has further submitted that though the said Mahesh Chand was present in court, he has not chosen to lead his evidence and has attempted to run away from the truth. The said Jamunabai has died during the pendency of the petition as well as the suit. Mr. Kapadia further submitted that the said Mahesh Chand further submitted that the said Mahesh Chand and the said Jamunabai have been living together as husband and wife and as a result of their union and/or co-habitation, five children are born to them. There is no dispute as regards the paternity of the Petitioner/Plaintiffs as also Respondents 17 and 18/Defendants 17 and 18. Both the said Mahesh Chand and Jamunabai have even attended the family functions as husband and wife which fact is admitted and not denied either by the Petitioners/Plaintiffs or any of the Respondents/Defendants from amongst the Respondents 4 to 32/Defendants 4 to 32. In the facts of the case, Mr. Kapadia submitted that though both the said Mahesh Chand and the said Jamunabai have chosen to deny their marriage with each other with an ulterior motive, in law they are presumed to have married to each other more particularly when the Petitioner/Plaintiffs have not discharged the burden of proving the fact asserted by them to the effect that they were not married to each other.

Mr. Kapadia has submitted that the Petitioners/Plaintiffs are legitimate children of the said Mahesh Chand and as such the said Mahesh Chand being the tanner and natural guardian of the Petitioner/Plaintiffs was entitled in law to sign and execute the said agreement on their behalf. In support of his those submissions, Mr. Kapadia has relied upon the case of Shivajirao Lagad Vs. Bapurao Lagad and Others, as also upon the case of Hoovayya Kanthappa Shetty Vs. Renuks S. Shetty, Mr. Kapadia has also relied upon the case of Badri Prasad Vs. Dy. Director of Consolidation and Others, .

25. u/s 114 of the Indian Evidence Act, 1872, the court may presume the existence of any fact which it thinks likely to have happened, regard being had to

the common course of natural events and human-conduct in their relation to the facts of the case. u/s 50 of the same Act when the court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct has to be extent of such relationship of any person who, as a member of the family or be extent wise has special means of knowledge on the subject, is a relevant fact. The said Mahesh Chand could have stopped in the witness box to give evidence as to the facts pertaining to his marriage before this court which the said Mahesh Chand deliberately chose not to do so. The fact that the family functions were attended and participated by the said Mahesh Chand and the said Jamunabai as husband and wife has not been denied. The fact that the said Mahesh Chand is the father of the Petitioners/Plaintiffs is admitted. So also the fact that the said Jamunabai was the mother of the Petitioners/Plaintiffs is admitted There was along union and/or co-habitation between the said Mahesh Chand and the said Jamunabai as a consequence whereof five children including the Petitioners/Plaintiffs were born to them. At the time when the said agreement was signed and/or executed on 3rd January, 1989, neither the said Mahesh Chand nor any of the other Respondents/Defendants had informed these Defendants that the said Mahesh Chand was not married to the said Jamunabai. In the arbitration Suit No. 197 of 1987 as also in the Arbitration Petition No. 16 of 1989, the said Mahesh Chand had filed affidavits affirmed on 27th January, 1989 in his capacity as father and guardian of the Petitioner/Plaintiffs and had prayed therein for being appointed as guardian ad litem of the Petitioners/Plaintiffs. In those affidavits filed by the said Mahesh Chand, the said stated that he was not the natural guardian of the Petitioners/Plaintiffs or that the said Jamunabai was the natural guardian of the Petitioners/Plaintiffs. u/s 114 of the Indian Evidence Act, 1872 strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on one who seeks to deprive the relationship of legal origin. As held in the case of Shivajirao Lagad v. Bapurao Laged (supra), Law presumes in favour of marriage and against concubinage and on him who challenges the legitimacy must be thrown the burden of proving it. Same view has been taken by this court in the case of Hoovayya Kanthappa Shetty v. Renuka S. Shetty (supra). The paternity of the petitioners/Plaintiffs being admitted and Petitioners/Plaintiffs pleading that they are illegitimate descents, the legal presumption being in favour of the legitimacy, the onus lies on Petitioners/Plaintiffs to prove it. No such burden has been discharged by the Petitioners/Plaintiffs. The Supreme Court in the case of Badri Prasad v. Dy. Director of Consolidation (supra) has held that law leans in favour of legitimacy and frowns upon bastardy. In the facts of the case, I held that assertion of fact by Petitioners/Plaintiffs to the effect that the said Mahesh Chand and the said Jamunabai were not married lo each other has not been proved and that ihc said Mahesh Chand and the said Jamunabai were presumed to have married to each other. I further hold that in the facts of the case, the Petitioners/Plaintiffs are the legitimate children of the said Mahesh Chand and Jamunabai since the said Jamunabai was the wife of the said Mahesh Chand. I further hold that the said

Mahesh Chand, being the father and natural guardian of the Petitioners/Plaintiffs had the legal capacity and/or authority to represent the Petitioners/Plaintiffs and to sign the said agreement on their behalf and as such, the said agreement signed and executed by the said Mahesh Chand on behalf of the Petitioners/Plaintiffs is valid, legal and binding on the Petitioners/Plaintiffs.

Clause 1 of the said consent terms arrived between the parties to the said Arbitration Petition No. 16 of 1989 in terms whereof the said order dated 31st January, 1989 was passed by this court, reads as under :

"Subject to the terms and conditions contained in the agreement of Reference dated 3rd January, 1989 (a)"

The compromise arrived between the parties as recorded in the said Consent Terms was made subject to the terms and conditions of the said agreement. On 31st January, 1989, this court had accorded its sanction to the compromise in terms of the said Consent Terms which were certified by this court to be in the interest and for the benefit of the minors including the Petitioners/Plaintiffs. In the circumstances, sanction was also accorded by this court to the said agreement which was also held to be in the interest and for the benefit of the minors including the Petitioners/Plaintiffs. There is no set form in which the certificate which the court is required to record need be made. On 31st January, 1989, Pratap J. (as he then was) passed the Order as under :

"Order in terms of the consent terms dated 31st January, 1989 signed by Advocates for the Petitioners, Respondents No. 1 to 4, Respondents No. 22 to 31 and Respondents No. 5 to 21 respectively and tendered in court taken on record and marked "X".

Considering the facts and circumstances of the case and hearing respective counsel therein, the Consent Terms, are certified to be in the interest of and for the benefit of the minors.

x x x x x"

It is evident that Pratap J. had the provisions of Order XXXII Rule 7 of the Code of Civil Procedure, 1908 in view. He realised that he had to give permission and he also realised that the compromise had to be for the benefit of the minors. The portion of the said Order reproduced above shows that Pratap J. did give requisite permission and that he was satisfied about the minors interest. In the facts, I hold that there was compliance with provisions of Order XXXII Rule 7 of the Code of Civil Procedure. In this view of mine, I am fortified by the judgment of the Apex Court of our country in the case of Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath, , on which reliance has been justifiably placed by Mr. Kapadia. The case of Sadashivappa Gangappa v. Sanangappa Chanvirappa Maliyamodkoti (Rep. in AIR 1931 Bom 500 , as also the case of AIR 1946 72 (Privy Council) , relied upon by Mr. Kathawala have no applicability as in my view the provisions of Order XXXII Rule 7 of CPC are complied.

26. Prayer (a)(1) of the Petition is identical to prayer (a) of the suit Prayer (a)(ii) of the Petition is not the subject matter of the suit. As stated by the petitioners in the petition, the petition is filed for abundant caution since in view of the provisions of S. 32 of the Act, it is possible to hold that the suit for the reliefs prayed for therein may not be maintainable. In the said Arbitration Suit No. 197 of 1989 a decree in terms of prayers (a) and (b) thereof has passed by this court on 31st January 1989 and the said agreement was ordered to be filed in this court and reference of the disputes and differences between the parties thereto to the arbitration of the learned Arbitrators was made. The learned Arbitrators were directed to make and publish their award within six months from the date of entering upon the reference. Accordingly, the said agreement stood merged into the decree passed by this court on 31st January, 1989. The said decree cannot be set aside except on available grounds such as fraud and gross negligence. No such ground has even been pleaded in the petition. The petitioners are not entitled to have the said decree set aside in the petition as sought by prayer (a)(ii) of the the petition.

27. Mr. Kathawala, Mrs. Nanavati, Mr. Bookwala and Mr. Zaiwala have, however, submitted that the said order passed on 31st January, 1989 in the said Arbitration Suit No. 197 of 1989 is not a "decree" of this court and as such, it was not incumbent upon the petitioners to plead grounds of fraud and/or gross negligence in the Petition so as to get the same set aside by this court. In support of their this submission, reliance has been placed on the case of AIR 1949 1 (Federal Court) , where it has been held that "final order" must be an order which finally determines the points in dispute and brings the case to an end. Reliance has also been placed on the case of *Maltextmalsters Private Ltd. Vs. Allied Engineers*, , where it has been held by the Delhi High Court that the order accepting the application u/s 20 of the Act is not the "decree" that is envisaged in Order 41 Rule 1 of CPC. Reliance has also bee placed on the case of *Bimal Kumar Ghosh and Another Vs. Saikat Sarkar*, , where Calcutta High Court has held that application u/s 20 of the Act though has to be registered as a suit as provided in, Section 20(2) of the Act is not a suit in the fullest sense of the terms. This submission is devoid of any merit. u/s 20 of the Act, the application, when filed is to be numbered and registered as a suit with the applicant as "plaintiff and other parties as defendants". As borne out from the minutes of the Order dated 31st January, 1989 passed in the said Arbitration Suit No. 197 of 1989, decree in terms of prayers (a) and (b) thereof was passed. Since the Plaintiffs therein were minors, the said Mahesh Chand was appointed their guardian ad litem along with others to look after the interest of his minor children in the suit. The said Order passed in the said Arbitration, Suit No. 197 of 1989 finally disposed of the said suit. After the said Order, the suit has not remained alive to have the rights of parties thereto still to be determined. In the case of *Mohan Lal Magan Lal Thacker Vs. State of Gujarat*, , the Supreme Court has observed that generally speaking, a judgment of order which determines the principal matter in question is termed final. As held by Privy Council in the case

of AIR 1933 58 (Privy Council) , the finality must be a finality in relation to the suit. The said order dated 31st January, 1989 is final in relation to the said Arbitration Suit.

28. As aforesaid, in order to preserve family peace and harmony and to resolve all disputes and differences amongst the said three groups as also to avoid future disputes, a family arrangement as recorded in the said agreement was arrived at. Since the parties to the said family arrangement were unable to agree upon the value of 1/3rd share of the said Ramesh Chand Group in the said businesses, in the said Hyderabad properties and of their 28% interest in the business of the said WIG as also to the mode, manner and time of payment thereof and also as to whether the payment thereof was to be made with or without interest and with intent to resolve things, the parties to the said family arrangement agreed to refer the disputes and/or differences in respect thereof pertaining thereto to the arbitration of the learned Arbitrators as provided therein. The said arbitration agreement is a part of the family arrangement arrived at amongst the said three groups and was signed also by the said Mahesh Chand for and on behalf of the Petitioners/Plaintiffs and Respondents 17 and 18/Defendants 17 and 18 as their Father and guardian. The said Mahesh Chand who signed the said Family arrangement, was, at that time also the head of his family comprised of the said Mahesh Chand Group. It being a family arrangement, each head of the said family groups was entitled and has the capacity to represent members of his family therein. The Petitioners/Plaintiffs being the members of the said Mahesh Chand Group and part of the family headed by the said Mahesh Chand are bound by the said family arrangement entered on their behalf by the said Mahesh Chand also in his capacity as head of the said family. There is no averment in the Petition and/or the Complaint filed in the suit that the said family arrangement was not voluntary or that it was induced by fraud, coercion or undue influence. Taking the totality of the circumstances into consideration, it appears that the said family arrangement was bonafide arrived amongst the said three groups so as to solve the family disputes by a fair and equitable division or allotment of properties amongst the members of the said groups. As held by the Supreme Court in case of *Kale and Others Vs. Deputy Director of Consolidation and Others*, , the family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. The principles apply to the case of ordinary compromise between the strangers, do not apply to the case of compromise in the nature of family arrangements. The object of such arrangement is to protect the family from long drawn litigation or perpetual stiles which bar the unity and solidarity of the family and create hatred and bad blood between the various members of family. Even on the footing, the said, arrangement being integral part of the said family arrangement is valid, legal and binding to the Petitioners Plaintiffs.

29. The Petitioners/Plaintiffs held 12 equity shares out of 1080 equity shares in Respondent No. 30/Defendant No. 30. Similarly, Petitioners/Plaintiffs held 127 equity shares out of 5050 equity shares in Respondent No. 32/Defendant No. 32.

Both the Respondent No. 30/Defendant No. 30 and Respondent No. 32/Defendant No. 32 being limited companies, are duly incorporated and registered under the provisions of the Companies Act, 1956. They are separate legal entities by themselves and are distinct and separate from the Petitioners/Plaintiffs. The Petitioners Plaintiffs are fractional share holders therein and since both the said limited companies are parties to the said agreement, it does not lie in the mouth of the Petitioners/Plaintiffs to say that their corporate interest has not been taken care of while having reference to arbitration of the learned Arbitrators. Moreover, Mr. Kapadia, on behalf of those Defendants, as stated in their written statement filed in the suit, has made a statement to the effect that notwithstanding the provisions contained in the said agreement and the order dated 31st January, 1989 passed in the said Arbitration Petition No. 16 of 1989, these Defendants shall not claim any amount from the Petitioners/Plaintiffs and/or Respondents No. 17 and 18/Defendants No. 17 and 18 under the said agreement or the said order or in the said arbitration proceedings and as such, the Petitioners/Plaintiffs would not be adversely affected by the said agreement, the said order or the said arbitration proceedings. This, is my view even otherwise sufficiently protests the interest of the Petitioners/Plaintiffs and the grievance now sought to be made on behalf of the Petitioners/Plaintiffs is wholly unjustified.

30. Mr. Bookwala and Mr. Zaiwala have submitted that if the said agreement is held to be void qua Petitioners/Plaintiffs, it should also be held void qua the Respondents/Defendants other than these Defendants as, in their submission, the said agreement is not severable Reliance in this respect has been placed on the case of Chhabba Lal v. Kallu Lal (supra) wherein the Privy Council has held that if minors successfully challenge an agreement to refer, it is avoided against all parties thereto. Reliance has also been placed upon, the case of Mohd. Amin v. Vakil Ahmad (Rep. in (1953) SCA 245 . It is a case under Mahomedan Law whereunder, a de facto guardian has no power to transfer any right or interest in the immovable property of the minor. The Supreme Court in that case, on the basis of uncontested position before it, observed that if the deed of settlement was void, it could not be void only que the minor but would be void altogether qua all the parties including those who were suit juris. In my view, the submission of Mr. Bookwala and Mr. Zaiwalla is devoid of any merit Mr. Kapadia has submitted that even if the said agreement is held to be void qua the Petitioners/Plaintiffs. (which in his submission is not void), it is not void qua the other parties thereto. In support of his submissions, Mr. Kapadia has put reliance upon the case of Kaushalya Devi and Others Vs. Baijnath Sayal and Others, . In that case it was contended that the preliminary decree passed in the suit for partition was invalid in that at the time of passing the said decree the Court had failed to comply with the mandatory provision of. Order XXXII Rule 7 of the CPC. The Supreme Court while laying down the law in this respect has in terms held :

"The effect of the failure to comply with Order 32, Rule 7(1) is specifically provided by Order 32, Rule 7(2) which says that any such agreement or

compromise entered into without the leave of the court so recorded shall be voidable against all parties other than the minor, Mr. Jha reads this provision as meaning that the impugned agreement is voidable against the parties to it who are major and is void in respect of the minor, in other words, he contends that the effect of this provision is that the major parties to it can avoid it and the minor need not avoid it at all because it is a nullity so far as he is concerned, in our opinion this contention is clearly inconsistent with the plain meaning of the rule. What the rule really means is that the impugned agreement can be avoided by the minor against the parties who are major and that it cannot be avoided by the parties who are major against the minor. It is voidable and not void. It is voidable at the instance of the minor and not at the instance of any other party. It is voidable against the parties that are major but not against a minor. This provision has been made for the protection of minors, and it means nothing more than this that failure to comply with the requirements of Order 32, Rule 7(1) will entitle a minor to avoid the agreement and its consequences, if he avoids the said agreement it would be set aside but in no case can the infirmity in the agreement be used by other parties for the purpose of avoiding it in their own interest. The protection of the minor's interest requires that he should be given liberty to avoid it. No such consideration arises in respect of the other parties to the agreement and they can make no grievance or complaint against the agreement on the ground that it has not complied with Order 32, Rule 7(1). The non-observance of the condition laid down by Rule 1 does not make the agreement or decree void for it does not affect the jurisdiction of the court at all. The non-observance of the said condition makes the agreement or decree only voidable at the instance of the minor. That, in our opinion, is the effect of the provision of Order 32, Rule 7(1) and (2)".

I hold that neither the terms of the said agreement, are adverse to interest of the Petitioners/Plaintiffs nor the said Mahesh Chand executed the same in disregard of the interest of Petitioners/Plaintiffs. The said agreement is void neither qua the Petitioners/Plaintiffs nor qua any of the Respondents/Defendants. In my view, the said agreement is valid, legal and binding on the Petitioners, Plaintiffs as also on the Respondents/Defendants. Even otherwise also, the arbitration clause contained in the said agreement dated 3rd January, 1989 is severable and is legal, valid and binding.

31. The issues framed in the suit are accordingly answered as under :

Issue Nos :

- (1) In affirmative.
- (2) In view of my findings to the effect.
- (3) that the said agreement is legal, valid and binding on the plaintiffs, it is not necessary to answer these issues,
- (4) Yes, the Plaintiffs have no cause of action and the suit is not maintainable.

(5) In affirmative.

(6) In negative.

(7) In negative.

(8) In negative.

(9) Plaintiffs were properly represented through their father and guardian at the time of execution of the said agreement and were validly made parties thereto.

(10) In affirmative.

(11) Plaintiffs will not be adversely affected by the said agreement, order or arbitration proceedings and therefore not entitled to maintain the suit.

(12) In negative.

(13) Innegative.

(14) No.

(15) No.

(16) No.

(17) Plaintiffs are not entitled to any relief in the suit.

(18) No relief.

In the result :

(i) the Arbitration petition No. 53 of 1991 is dismissed :

(ii) the Interim petition No. 184 of 1991 is dismissed : and

(iii) the suit No. 3207 of 1992 is dismissed.

In the circumstances there shall, however, be no order as to costs in any of the above proceedings. Issuance of certified copy of the minutes expedited.

32. Order accordingly.