
(2010) 04 AHC CK 0242
In the Allahabad High Court

R.N. Agarwal

APPELLANT

Vs

Laxmi Sugar Mills Co. Pvt. Ltd.

RESPONDENT

Date of Decision : 16-04-2010

Acts Referred:

Arbitration Act, 1940 — Section 13, 14, 15, 16, 2
Constitution of India, 1950 — Article 226, 32
Income Tax Act, 1961 — Section 230A

Citation : (2010) 5 AWC 5035

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Devi Prasad Singh, J.—Present appeal u/s 39 of the Indian Arbitration Act, 1940 (In short the Act), has been preferred against the judgment and order dated 27.10.1999, passed by the First Additional District Judge, Sitapur, rejecting the objection filed by the appellant u/s 30/33 of the Act against the Award dated 23.8.1998 of the Arbitrator in Civil Suit No. 11 of 1979. By the judgment and order dated 27.10.1999, the Additional District Judge Sitapur, while rejecting the objection, made the Award Rule of the Court. Hence the present appeal.

2. The respondent M/s. Laxmiji Sugar Mills Co. Private Limited (In short M/s. Laxmi Sugar Mills), entered into the agreement on 8.1.1976 with the appellant Sri R.N. Agarwal, Managing Director, M/s. Shree Balaji Textile Mills (P) Ltd., Bangalore. Under the agreement, M/s. Laxmi Sugar Mills had undertaken to sell the business assets of "Narain Vegetable Products" involved in the business of manufacture of vegetable oil Products including Tin Container Plant and Soap Plant. M/s. Laxmi Sugar Mills has been referred as Seller and absolute owner of M/s. Narain Vegetable Products. The agreement with regard to sale of property of M/s. Narain Vegetable Products described in schedule-I of the said agreement, was settled subject to payment of Rs. 50 lakhs by the purchaser.

3. The agreement reveals that the appellant R. N. Agarwal has signed the

agreement in the capacity of Managing Director of one M/s. Balaji Textile Mills (P) Limited, Bangalore. The agreement provides that the appellant R.N. Agarwal has agreed to purchase the business assets of M/s. Narain Vegetable Products for M/s. Balaji Textile Mills (P) Limited (In short M/s. Balaji Products) or in any other name to be approved by the Registrar of the Companies. The agreement further reveals that on the date of agreement, the buyer had paid a sum of Rs. 6,51,000/- by means of demand draft/cheque and for the rest amount to the tune of Rs. 43,49,000/-, it was agreed that it shall be paid by the buyer to seller after discharging certain liabilities of the seller which are detailed in schedule-II of the agreement. It has been further provided in the agreement that on clearance of such liabilities of the seller by the buyer, it shall be treated as balance of sale consideration to the seller by the buyer for all intents and purpose. It was further agreed that it shall be the duty of seller to discharge other liabilities pertaining to the business of M/s. Narain Vegetable Products carried on till 31.12.1975 and not referred to in Schedule-II. The agreement was signed by the appellant on behalf of M/s. Balaji Product. Clause No. 11 of the agreement provides that in the event of any dispute arising between the parties, the matter may be referred to Arbitrator under the Act.

4. M/s. Laxmi Sugar Mills moved an application u/s 20 of the Act with the allegation that in terms of agreement dated 8.1.1976, the possession of the plant was delivered to the appellant. The appellant M/s. Balaji Products by virtue of agreement, purchased only the assets of the plant and not the entire business of M/s. Narain Vegetable Products. In the application, it has been stated that the agreement for sale expired on 8.1.1979 and since M/s. Balaji Vegetable Products is not ready to pay the entire amount for execution of the sale-deed hence dispute arose.

5. While submitting the reply to the application filed u/s 20 of the Act, the appellant had not disputed the execution of Agreement dated 8.1.1976. However, it was stated that purchase was for the plants, land, machinery and everything belonging to M/s. Narain Vegetable Products. It is further alleged that entire amount has been paid up and the respondent is not executing the sale deed in spite of repeated requests by M/s. Balaji Products/appellant. It was further stated that the appellant M/s. Balaji Vegetable Products was shirking from their responsibility and no cause of action has arisen hence the present petition is not maintainable.

6. The application u/s 20 of the Act moved by M/s. Laxmi Sugar Mills was heard and decided by the learned First Additional District Judge Sitapur, and vide judgment and order dated 25.3.1980, the application was dismissed with costs. Against the judgment and order dated 25.3.1980, M/s. Laxmi Sugar Mills had filed an appeal which was registered as F.A.F.O. No. 174 of 1985, before this Court. The appeal was heard and decided by the High Court. Vide judgment and order dated 22.4.1987, and the High Court had set aside the judgment dated 25.3.1980 passed in Civil Suit No. 11/1979 by the First Additional District Judge

Sitapur. The High Court directed to refer the issue to the Arbitrator under Sub-section (4) of Section 20 of the Act. While remanding the matter, High Court itself has framed two issues for reference to Arbitrator. Relevant portion from the judgment and order dated 22.4.1987 passed by Division Bench of the High Court is reproduced as under:

F.A.F.O. No. 174 of 1985 is allowed. The judgment dated 25.3.80 of the learned 1st Addl. District Judge, Sitapur in Original Suit No. 11 of 1979 is set aside. The learned lower court is directed to refer the following dispute between the parties to an Arbitration u/s 20(4) of the Act:

(i) Whether the opposite party respondent, R.N. Agarwal, has discharged the liabilities undertaken by him by agreement dated 8.1.76, Ex.2?

(ii) Whether the opposite party respondent R.N. Agarwal is entitled to the execution of a sale deed in pursuance of the terms of agreement contained in Ex.2 and if so, in respect of what property?

The applicant appellant will get costs throughout from the opposite party respondent.

F.A.F.O. No. 128 of 1983 is allowed and the order dated 19.4.83 in Original Civil Suit No. 91 of 1981 is set aside. The proceedings of said Original Civil Suit shall remain stayed u/s 34 of the Indian Arbitration Act, 1940 till the disposal and conclusion of the Arbitration proceedings in Original Civil Suit No. 11 of 1979 giving rise to F.A.F.O. No. 174 of 1985. The appellants shall get costs throughout.

7. It may be noted that during the pendency of application u/s 20 of the Act, M/s. Balaji Vegetable Products Private Limited and M/s. Sri Balaji Textile Mills Pvt. Ltd., both were represented by Mr. R.N. Agarwal in the capacity of Managing Director and Director respectively, and filed Civil Suit No. 91/81 in the Court of Civil Judge, Sitapur, for specific performance of contract for sale in terms of agreement dated 8.1.1976. The suit came up for disposal in the Court of IIIrd Additional District Judge Sitapur. Feeling aggrieved, M/s. Laxmi Sugar Mills filed an application u/s 34 of the Act to stay the proceeding of civil suit, pending arbitration proceeding. The application u/s 20 of the Act was dismissed by the judgment and order dated 25.3.1980, passed by the First Additional District Judge, Sitapur. Against the judgment and order dated 25.3.1980, F.A.F.O. No. 174/1985 was filed in the High Court whereas, application u/s 34 of the Act was dismissed by the order dated 19.4.1983. Feeling aggrieved, M/s. Laxmi Sugar Mills filed F.A.F.O. No. 128 of 1983. Both the appeals were clubbed together and decided by the High Court, vide judgment and order dated 22.4.1987 (supra).

8. In compliance of directions of High Court, the First Additional District Judge Sitapur, vide order dated 16.1.1989, appointed Hon"ble Mr. Justice J.S. Trivedi (Rtd.) as Arbitrator. Both the parties filed their claims, written statement and rejoinder. The Arbitrator, in his Award dated 23.8.1998, had framed another issue as Issue No. 3 which is as under:

The issue No. 3: Is the agreement for sale between Sri R.N. Agarwal or as Managing Director, M/s. Balaji Textile Mills Limited and M/s. Laxmi Sugar Mills?

9. The Arbitrator, keeping in view the judgment of Karnataka High Court, framed another issue, which is reproduced as under:

Issue No. 4. In view of the order of the Hon'ble High Court of Karnataka what consequential relief can be granted?

10. While assailing the impugned judgment, Sri U.K. Srivastava learned Counsel for the appellant has relied upon the cases reported in Orissa Mining Corporation Ltd. Vs. Prannath Vishwanath Rawlley, Orissa Mining Corporation Ltd. v. Prannath Vishwanath AIR 1989 SC 402 : Dandasi Sahu Vs. State of Orissa, Dandasi Sahu. v. State of Orissa 1990 SC 1132 : Associated Engineering Co. Vs. Government of Andhra Pradesh and another, Tarapore and Co. Vs. State of M.P., : Union of India (UOI) Vs. G.S. Atwal and Co. (Asansole), Balaji Vegetable Products P. Ltd. Vs. Union of India and Others, Balaji Vegetable Products (P) Ltd., Bangalore. v. The Union of India and Ors.

11. On the other hand, learned Counsel for the respondents relied on the judgments reported in State of Rajasthan Vs. Puri Construction Co. Ltd. and Another, M/s. Arosan Enterprises Ltd. Vs. Union of India and Another, Hari Om Maheshwari Vs. Vinitkumar Parikh, Himachal Pradesh State Electricity Board Vs. R.J. Shah and Company, Ravindra Kumar Gupta and Company Vs. Union of India (UOI), Ravindra Kumar Gupta and Company. v. Union of India.

Issues before the Karnataka High Court:

12. It shall be appropriate to deal with the controversy adjudicated by the Karnataka High Court between the parties. M/s. Balaji Vegetable Products (P) Limited, had filed Writ Petition No. 1878 of 1977 before Karnataka High Court at Bangalore. In the writ petition, Union of India, Director of Vanaspati, Ministry of Civil Supplies Government of India and M/s. Laxmi Sugar Mills Private Ltd., were respondents. It was prayed that a writ in the nature of mandamus be issued directing the respondents to amend the industrial license dated 14.12.1970 for manufacture of 15 tonnes of vanaspati per day by entering the name of the appellant M/s. Balaji Vegetable Products as owner of the said manufacturing plant forthwith.

13. Hon'ble Single Judge of Karnataka High Court while allowing the writ petition, had allowed the claim of M/s. Balaji Vegetable Products and directed the Director of Vanaspati, Ministry of civil supplies Government of India, to transfer the industrial license dated 14.12.1970 existing in favour of M/s. Narain Vegetable, Sitapur, in favour of M/s. Balaji Vegetable Products. The case has been reported in Balaji Vegetable Products P. Ltd. Vs. Union of India and Others, of the judgment, brief facts with regard to controversy raised before the Karnataka High Court, has been discussed which covers the agreement dated 8.1.1976. It shall be appropriate to reproduce para 2 of the judgment of M/s.

Balaji Vegetable Products (supra):

2. The petitioner came to be incorporated as a Company under the provisions of the Indian Companies Act. On 17.1.1976 a Certificate of registration is produced by the petitioner as per Annexure-D. One Mr. R.N. Agarwal, Managing Director of Sri Balaji Textile Mills Private Limited, Bangalore entered into an agreement with the third respondent to purchase the Industrial undertakings known as "Narain Vegetable Products" situate at Sitapur, Uttar Pradesh owned by the third respondent, on 17.12.1975 for a sum of Rs. 50 lakhs and paid a sum of Rs. 2,01,000/- through a cheque. A receipt to that effect was executed by the third respondent. A copy of the same is produced as Annexure-A. The possession of the Industrial Unit in question, according to the case of the petitioner was handed over on 3.1.1976, as per Annexure-B. Further case of the petitioner is that an agreement for sale dated 8.1.1976, produced as Annexure-C was also executed by Sri R.N. Agarwal as Managing Director of Sri Balaji Textile Mills Private Limited, and by Sri N.K. Seth as the Director of the third respondent on behalf of the third respondent; that the petitioner was put in possession of the assets mentioned in the schedule to the agreement, and from that time it has been exclusively managing and running the industrial unit; that on 28.1.1976 an application was sent to the second respondent informing him that the petitioner has taken over M/s. Narain Vegetable Products, Sitapur and starting production of Vanaspati from 30.1.1976 in the name and title of M/s. Balaji Vegetable products, Pvt. Ltd., Sitapur and shall be selling the product, under the brand name of "Suhagin". Thereafter, the petitioner sought for substituting its name in the licence as per Rule 194 of the Registration and licencing of Industrial undertakings Rules 1952 (hereinafter referred to as the Rules) and also sought for allotment of imported oil for the production of Vanaspati oil. As the name of the petitioner was not substituted on the ground that it was being opposed to by the third respondent, the petitioner has approached this Court for the aforesaid relief"s.

14. It has not been disputed that the writ petition filed before the Karnataka High Court was filed by M/s. Balaji Vegetable Products through its Managing Director Sri R.N. Agarwal. The appellant approached the Karnataka High Court as Managing Director of the company. The foundation of pleading and arguments advanced by the parties before the Karnataka High Court was the agreement in question. The agreement dated 8.1.1976, created cause of action to approach the Karnataka High Court to claim transfer of license in the name of M/s. Balaji Vegetable Products. The Hon"ble Single Judge of Karnataka High Court had allowed the writ petition with the following directions. To reproduce the relevant portion of the said judgment as under:

9. For the reasons stated above, this writ petition is allowed, in the following terms:

(i) The communication dated 3.2.1977 produced as annexure-Q bearing No. 3 (15)/76-LA-II/76 issued by the under Secretary to the Government of India,

Ministry of Industry, Department of Industrial Development Secretariat for Industrial Approvals, LA II section, is hereby quashed;

(ii) Respondents 1 to 2 are directed to transfer the industrial licence No. L/28 (2)/N-12/70 dated 14.12.1970 in favour of M/s. Narain Vegetable Products, Sitapur in the name of the petitioner subject to result of the Civil Suit No. 91/81 pending on the file of the Civil Judge court Sitapur for specific performance of the agreement for sale of the unit in question.

(iii) The petitioner is permitted to file an application before the second respondent claiming dues, if any, in the supply of the prescribed quota of imported oil required for manufacture of vanaspati at the manufacturing unit at Sitapur known as Narain Vegetable products, Sitapur, agreed to be sold to the petitioner and the possession of it has also been delivered to the petitioner, pursuant to that agreement on 30.1.1976. On such application beingn filed, the second respondent shall decide the same in accordance with law after hearing the petitioner, within four months from the date of filing the application.

(iv) The second respondent is directed to supply the prescribed quota of imported oil required for the manufacturing of vanaspati at the aforesaid industrial unit at Sitapur to the petitioner from today onwards as per the Rules, Regulations and orders governing the supply of the same.

(v) This order, be complied with in four months from the date it is received. The reliefs granted and the directions issued in this order and the findings recorded herein are subject to the ultimate result of the civil suit No. 91/81 pending on the file of the Court of the Civil judge, Sitapur.

(vi) It is also further made clear that this order shall not be construed as coming in the way of the parties to the Civil suit No. 91/81 pending on the file of the court of civil judge, Sitapur to seek such other interim orders as are found necessary and the court to pass the same in accordance with law without affecting the reliefs granted in this order.

15. Against the aforesaid judgment of Hon''ble Single Judge, respondent M/s. Laxmi Sugar Mills Private Limited had preferred Writ Appeal No. 1876 of 1986 before a division Bench of Karnataka High Court. The Division Bench of Karnataka High Court had not entered into the merit of the judgment dated 24.4.1986 passed by the Hon''ble Single Judge but observed that since the matter is pending before the sole Arbitrator, out of Civil Suit No. 91/81 pending before the civil Judge, Sitapur, a request was made to the Arbitrator to complete the proceeding on or before 31.10.1990. However, while finally passing the order, the division Bench declined to interfere with the rights vested by M/s. Balaji Vegetable Products on account of transfer of license dated 14.12.1970 subsequently renewed. It shall be appropriate to reproduce the Division Bench Judgment of Karnataka High Court dated 13.6.1990 as under:

We do not think we need go into the various questions of law that are raised in

this Writ Appeal attacking the judgment of our learned brother Judge Swami, rendered in W.P. No. 1878/1977 on 24.4.1986 in view of the following order which we propose to pass:

1) Admittedly the question of title in that, whether there has been a valid transfer by M/s. Laxmi Sugar Mills (P) Ltd., in favour of M/s. Balaji Vegetable Products (P) Ltd., is pending before Hon"ble Justice Trivedi the arbitration out of the Civil Suit No. 91/81 originally on the file of the learned Civil Judge, Sitapur. Therefore we would make a request that the arbitration be completed on merits on or before 31.10.1990;

2) Should be held that there has not been a valid transfer by M/s. Laxmi Sugar Mills (P) Ltd. in favour of M/s. Balaji Vegetable Products (P) Ltd., the benefit of licence No. L/28 (2)/N-12/70 dated 14-12-1970 and the subsequent renewal thereof which are hitherto enjoyed by M/s. Balaji Vegetable Products (P) Ltd., pursuant to the orders under appeal and also interim-directions in the Writ Appeal shall come to an end at once; and

3) On the contrary, should it be held that there is a valid transfer in favour of M/s. Balaji Vegetable Products (P) Ltd., the judgment of Swami, J. shall conclude the rights of the parties.

The Writ appeal is ordered in the above terms.

No costs.

16. In view of the above, it appears that M/s. Balaji Vegetable Products (P) Ltd., had approached the Karnataka High Court for transfer of license in its name under the garb of agreement dated 8.1.1976 and also filed a Civil Suit No. 91/81 for specific performance of contract through the Managing Director Sri R.N. Agarwal, who preferred the present appeal in this Court. The sole Arbitrator Justice Jai Shanker Trivedi, after considering various material on record and evidence led by the parties, held that appellant Sri R.N. Agarwal had not acted on his behalf. Rather, he signed the sale agreement dated 8.1.1976 on behalf of M/s. Balaji Vegetable Products. It was held that Sri R.N. Agarwal is not the mill owner. Entire transactions made during the course of business, was made by M/s. Balaji Vegetable Products (P) Ltd.. It was further held by the Arbitrator that the agreement in individual capacity is neither valid nor lawful. More so, when M/s. Balaji Vegetable Products is a Company and not any individual entity. The judgment of Karnataka High Court amply clears that it is M/s. Balaji Vegetable Products (P) Ltd., entered into the agreement for sale and not Sri R.N. Agarwal in his individual capacity. The agreement dated 17.12.1975 under which the possession was delivered, contemplates that it shall be adjudicated by 31.10.1976 or thereafter. The agreement dated 8.1.1976 does not specify the period. It was further held by the Arbitrator that liabilities, have been mentioned in the schedule and delay in discharging liability shall call for payment of interest as held by the Hon"ble Supreme Court in the case reported in K.S. Vidyanadam and Others Vs. Vairavan, The Arbitrator held that M/s. Balaji Vegetable Products

has no right to remain in possession of the property and the suit for specific performance of contract, was not sustainable.

17. The Arbitrator's award was subject matter of the consideration by the First Additional District Judge, Sitapur in Civil Suit No. 11/1979. Learned Additional District Judge, Sitapur on the basis of pleading of parties, framed following 11 issues which are reproduced as under:

1. Whether arbitrator has miscondacted himself by framing the additional issues other than two questions formulated by the Hon"ble High Court (Lucknow Bench), for decision by the arbitrator?

2. Whether the arbitrator has miscondacted himself by mentioning and involving Balaji Vegetable Products as opposite party No. 2 in his award, which was never party to the proceedings?

3. Whether the arbitrator has miscondacted himself in giving his findings on the point of limitation even after the point of limitation was deleted in the proceedings?

4. Whether the arbitrator has committed a patent error in holding that the agreement does not cover Makin's land?

5. Whether the arbitrator miscondacted himself by considering the paper No. C-46 dated 17.12.75 and placing reliance upon it?

6. Whether findings of arbitrator on the point of payment and discharge of liabilities made by defendant Sri R.N. Agarwal are improper in light of the evidence available on record? and arbitrator has ignored the material documents and admissions while considering this point?

7. Whether the arbitrator has miscondacted himself in introducing a third case and believing the theory of relationship of "managed company" and "managing company" between M/s. Narain Vegetable Products and Balaji Vegetable Products?

8. Whether arbitrator has committed patent error in holding that sale agreement was signed by R.N. Agarwal as Managing Director of Balaji Textile Mills & not in his personal capacity?

9. Whether the arbitrator has committed legal misconduct in holding that suit for Specific Performance was beyond time and it stands dismissed with costs and whether the arbitrator has gone beyond his jurisdiction in making this order?

10. Whether the order of imposing the costs and fees is without jurisdiction?

11. Whether the award is fit to be made "Rule of Court" or not?

18. Learned Additional District Judge Sitapur, while deciding issue No. 1, 2 and 3, held that framing of additional issues keeping in view the finding of Karnataka High Court by the Arbitrator, was within the jurisdiction and lawful. The Arbitrator

has not added any new issue for adjudication. Rather, he framed additional issue in the light of the judgment of Karnataka High Court and merely because the additional issue was framed, it does not mean that the Arbitrator has exceeded his jurisdiction.

19. While deciding issue No. 4 with regard to dispute that land across the Railway line cannot be included in the fixed assets nor treated as part and partial of the premises of the factory, the learned Additional District Judge, Sitapur, has shown his full agreement with the opinion of the Arbitrator that only the fixed assets within the premises of the factory known as "M/s. Narain Vegetable Products", were agreed to be sold, is correct. Learned Additional District Judge has also shown his full agreement with the finding of the Arbitrator that the land across the Railway line was not the subject matter of agreement dated 8.1.1976. It has been held that the property agreed to be sold, has been described in the agreement, are those fixed assets of the Company as on 8.1.1976, situate in the premises of M/s. Narain Vegetables Products, Shahjahanpur Road, Sitapur, U.P., consisting of immovable property (land, building, plants machinery and equipments) valuing Rs. 50 lakhs. The argument of objector defendant that the land existing across the Railway Line belonging to M/s. Narain Vegetable Products, is the part of schedule No. 1, was not accepted by the Arbitrator.

20. Finding recorded by the learned Additional District Judge affirming the opinion of the Arbitrator, seems to be correct. While interpreting the terms of the agreement relating to transfer of land or property, the courts should be cautious and should not supply any material, which is not existing or has not been referred in the agreement. Transfer of property or sale agreement, specify the property and the courts should not travel beyond that. No other property may be included while interpreting the sale agreement, which has not been referred in the agreement itself even if such property belongs to vendor or seller. Agreement should be construed literally word by word and no casus omisus should be supplied.

21. With regard to issue No. 5 that deed dated 8.1.1976 should have been considered in isolation and the Arbitrator has incorrectly considered the letter dated 17.12.1975, the learned Additional District Judge Sitapur, held that the letter dated 17.12.1975 should not be ignored and shown his agreement with the Arbitrator. The finding of learned Additional district Judge Sitapur, seems to be correct. Before the execution of agreement to sell dated 8.1.1976 the Board of Directors of Plaintiff claimants were informed and communicated to the buyer through letter dated 17.12.1975 (Paper No. C-46) with regard to intention for the transfer of property through sale-deed. The document dated 17.12.1975 was signed in presence of 2 witnesses and an endorsement has been made by the appellant Sri R.N. Agarwal with the remark, "Agreed and accepted for Sri Balaji Textile Mills Private Limited". The letter agreement dated 8.1.1976 was entered into between the parties as a follow up action of earlier document dated 17.12.1975. Accordingly, reliance placed by Arbitrator on the document dated

17.12.1975 does not seem to suffer from any impropriety, infirmity or illegality. The Arbitrator has not committed any misconduct by considering the document dated 17.12.1975 as Paper No. C-46.

22. While exercising his right to adjudicate a dispute under the Arbitration Act, it is not expected that the Arbitrator shall discharge his or her obligation under tight compartment without considering the related material and document which has got bearing with the issues or terms of reference.

23. While considering issue No. 6 as to whether the defendant objector has made payment and has discharged liabilities in terms of agreement dated 8.1.1976, the learned Additional District Judge after considering the plethora of materials on record, observed that on one hand, the objector has not made all the payments required under schedule-2 of sale agreement. On the other hand, the list submitted, contains so many items which were not made by the objector in discharge of liabilities under sale agreement but that has been made by him in connection with some other transactions. The objector has failed to make full payment to discharge his all liabilities. The objector has not paid anything except the amount of Rs. 6,51,000.00. Learned Additional District Judge Sitapur, upheld the finding of Arbitrator to the effect that the objector has failed to prove the discharge of his liabilities and there is nothing, which may lead us to the fact that the Arbitrator has committed misconduct in holding that the objector defendant has failed to discharge his liabilities.

24. During the course of argument with regard to issue No. 6, Sri U. K. Srivastava learned Counsel for the appellant has invited attention to the payment made by the appellant in pursuance of agreement and submitted that finding recorded by the learned Arbitrator as well as the learned Additional District Judge, Sitapur, at the face of record, is not sustainable. It has been submitted that even if the payment with regard to Dayal & Sons and Sikri Bros., found to be not part and partial of the liability under the agreement being trivial amount, it shall not make difference. It has been submitted that substantial amount was paid just before 8.1.1976 when the possession was delivered.

25. Out of sales tax of Rs. 9 lakhs for the year 1974-75 and amount of Rs. 7.25 lakhs has been admitted to be paid. The amount of Rs. 6,86,829.33 P. has also been paid. In case, the amount paid just before the agreement after delivery of possession is included, Rs. 4,60,000.00 shall also be deemed to be paid. Therefore, the finding of learned Arbitrator that only Rs. 6,50,000.00 has been paid, is not correct at the face of record.

26. It shall be appropriate to reproduce the schedule-II of the agreement which is as under:

Schedule-Annexure No. II

Schedule of liabilities agreed to be discharged by the Buyer. Lakshmiji Sugar Mills Company Pvt. Ltd. Rs. 4,60,000/-

Secured term loans: Punjab National Bank (Approx.) Rs. 5,00,000/-

Unsecured Statutory liability. Sales Tax for the year 1974-75 (Part) Rs. 6,86,829.33

Sales Tax for the year 1974-75 (Part) Rs. 9,00,000.00

Interest on the above Rs. 3,00,000.00

Labour dues Rs. 2,31,106.26

Unsecured Sundry Creditors Rs. 9,71,064.41

(as per separate list) 50% of registration charges to be borne by the seller (earmarked) Approx. Rs. 3,00,000.00

Rs.43,49,000.00"

27. During the argument, Sri J.N. Mathur, learned Senior Counsel for respondents, submits that only those payment should be taken into account which were paid after agreement. Submission of Sri Mathur, supported by the finding recorded by the learned Arbitrator as well as the learned Additional District Judge, Sitapur, seems to be not correct. All amount paid immediately at the time of delivery of possession or thereafter, shall be deemed to be paid under the terms of agreement. In case the appellant has paid certain amount after delivery of possession of the industry in question, expecting that the agreement is likely to be executed within two or three days, then such payment should be taken into account as fulfilling the liability under the agreement.

In view of the above, following amount seems to have been paid by the appellant as is evident from the record:

1. Rs. 4,60,000.00 (paid in part)
2. Rs. 6,86,829.33 (sales tax: 1974-75)
3. Rs. 7,25,000.00 (sales tax: 1974-75)

Total Rs. 18,71,829.33

28. Thus, from the argument advanced by the learned Counsel for the parties, and the material at the face of record, the payment of Rs. 18,71,829.33 seems to be paid by the appellant while discharging his liability under the agreement instead of Rs. 6,50,000 only, as observed by the learned Arbitrator and the learned Additional District Judge.

The rest of amount seems to have not been paid. Accordingly, the award is liable to be modified to this extent.

29. It was vehemently argued by the learned Counsel for the appellant that entire payment has been made and the appellant has discharged his liability. The concurrent finding recorded by the Arbitrator and the learned Additional District

Judge Sitapur, is otherwise and seems to be based on correct appreciation of material on record. The transaction made by the appellant after execution of agreement, appears to be the transaction while running the factory and meeting its liability. Not only the Arbitrator but the learned Additional District Judge, Sitapur also, himself compared and gone through each and every document on record and recorded a finding that the amount claimed to be paid by the objector, does not tally with the balance-sheet of the year 1975-76 and the difference is substantial. The amount paid in piecemeal, has been considered and a finding has been recorded that there cannot be said to be the payment under the terms and condition of sale agreement.

30. A finding has been recorded that substantial amount has been paid post January, 1976, which cannot be considered towards the liability under the agreement. Subject to modification and observation made hereinabove, the finding seems to be correct.

31. Some of the payment made by the objector, seems to be running bill or in lieu of mortgage of loan taken by them while running the factory.

32. With regard to one of the crucial issues, i.e., issue No. 8 that the agreement dated 8.1.1976 is whether made by Sri R.N. Agarwal in his personal capacity or on behalf of M/s. Balaji Textile Mills, learned Additional District Judge Sitapur held that the appellant Sri R.N. Agarwal had signed the sale agreement dated 8.1.1976 as Managing Director of M/s. Balaji Textile Mills and not in his personal capacity. The Arbitrator has not committed any misconduct in holding that the sale agreement was signed by Sri R.N. Agarwal as Managing Director of Balaji Textile Mills. The issue was decided against the objector defendant in favour of the claimant.

33. While affirming the finding of the Arbitrator the learned Additional District Judge has taken into account not only the judgment of Karnataka High Court but also certain provisions u/s 230A of Income Tax Act.

34. The Arbitrator as well as learned Additional District Judge, Sitapur, were impressed by the terms and conditions given in the document dated 17.12.1975 in consequence of which, the sale agreement dated 8.1.1976 was executed. At page 3 of the sale agreement dated 8.1.1976, the appellant Sri R.N. Agarwal had made an endorsement that the terms and conditions are agreed and acceptable for M/s. Sri Balaji Textile Mills Private Limited and it was duly signed by him. The appellant Sri R.N. Agarwal had signed the possession certificate (Paper No. C-10) and made endorsement on behalf of M/s. Balaji Textile Mills, Bangalore. Thus, the possession of property in question was taken over by Sri R.N. Agarwal not in his individual capacity but in the capacity of Managing Director M/s. Balaji Textile Mills. The claimant has also filed a copy of the plaint of original suit filed by M/s. Balaji Vegetable Products in the Court of Munsif, Bangalore wherein, it has been pleaded that the plaintiff entered into an agreement with M/s. Laxmiji Sugar Mills Private Limited. In the original suit, the plaintiff M/s. Balaji Vegetable Products

Private Limited was represented by his Managing Director Sri R.N. Agarwal appellant. M/s. Balaji Vegetable Products Private Limited in Writ Petition No. 4216 of 1976, which was filed before Karnataka High Court, filed a copy of sale agreement and the copy of plaint of Original Suit No. 91/1981 filed before the Civil Judge Sitapur, M/s. Balaji Vegetable Products Private Limited and M/s. Balaji Textile Mills, was represented by Sri R.N. Agarwal in the capacity of Managing Director. It has been admitted in the suit that agreement of sale was made between the plaintiff and M/s. Laxmi Sugar Mills. All these overwhelming documents and the surrounding facts and circumstances reveal that the agreement dated 8.1.1976 was purported to be signed by Sri R.N. Agarwal not in his individual capacity but he signed the sale agreement on behalf of M/s. Balaji Textile Mills as its Managing Director. This fact is evident from the perusal of original agreement available in paper book. Learned Additional District Judge Sitapur does not seem to have committed any substantial illegality, perversity while upholding the finding recorded by the Arbitrator.

35. It has been vehemently argued that the name of Balaji Sugar Mill was deleted from the petition by the order dated 18.1.1980. Hence the learned Arbitrator was not right in adjudicating the issue with regard to M/s. Balaji Textile Mills Ltd. The submission does not seem to carry weight for the reason that it was obligatory on the part of the Arbitrator to decide the dispute in terms of agreement dated 8.1.1976. The perusal of copy of original agreement on record at the face of record, shows that it was signed by Sri R.N. Agarwal on behalf of Shree Balaji Textile Mills and not on his own behalf. Hence the finding could not have been different than what transpires from the original record.

36. Neither the Arbitrator nor the learned Additional District Judge, Sitapur, was empowered to travel beyond the terms of agreement. Secondly, as observed (supra), in Karnataka High Court, the same agreement was relied upon while filing the writ petition on behalf of Balaji Textile Mills and observations made by Karnataka High Court was binding. Hence the finding recorded by the learned Arbitrator keeping in view the terms and conditions and contents of agreement after providing due opportunity of hearing to parties, does not seem to suffer from any impropriety or illegality holding that the agreement was entered between M/s. Balaji Textile Mills and the respondent M/s. Laxmi Sugar Mill and not by Sri R.N. Agarwal in person.

Moreover, it should be taken note of the fact that Suit No. 91/1981 filed in the Court of Civil Judge, Sitapur, was filed by M/s. Balaji Vegetable Products Pvt. Ltd., and Shri Balaji Textile Mills Pvt. Ltd., against M/s. Laxmi Sugar Mill Pvt. Ltd., for execution of sale-deed. Therefore, submission of appellant's counsel seems to be misconceived. It shall be appropriate to reproduce the relief claimed by the plaintiff M/s. Balaji Vegetable Pvt. Ltd., (plaintiff No. 1) and M/s. Balaji Textile Mills Pvt. Ltd., (plaintiff No. 2) in Civil Suit No. 91/81 which is as under:

10. That the plaintiff prays:

(a) That a decree of specific performance be passed in favour of plaintiff's with the direction that the defendant should execute the sale deed and get same registered in respect of immovable properties mentioned at items No. 1 & 2 of para 4 of the plaint above and to do all acts necessary for executing and registering the sale deed and completing the agreement dated 8.1.1976 within a time to be fixed by the court failing which the court may itself execute a sale deed on behalf of defendant and do all acts necessary on its behalf.

(b) The cost of suit be awarded to the plaintiff against the defendant.

(c) Any other relief to which the plaintiff is found entitled by this Hon''ble Court.

37. The proceeding of the suit was stayed u/s 34 of the Act. A perusal of plaint shows that M/s. Laxmi Sugar Mill Pvt. Ltd., has been shown as seller of the unit known as Narain Vegetable Products Ltd., situated at Shahjahanpur Road, Sitapur. This action, on the part of the Balaji Vegetable Pvt. Ltd., at the face of record further establishes the submission of respondent's counsel that Sri R.N. Agarwal had not executed the agreement in his personal capacity but he signed it on behalf of M/s. Balaji Textile Mills. Accordingly, the learned Arbitrator as well as learned Additional District Judge had rightly recorded the finding with regard to Balaji Textile Mills and Balaji Vegetable Products.

38. So far as the submission of the learned Counsel for the appellant with regard to earlier judgment of this Court in F.A.F.O. No. 128/83 is concerned, as observed (supra), keeping in view the judgment of Karnataka High Court, and the letter and spirit of the agreement with regard to liabilities of the appellant it was incumbent on the Arbitrator to record finding in the manner done.

39. With regard to issue No. 9 originated from Suit No. 91/1981 filed in the Court of Civil Judge Sitapur on 27.8.1981, after application u/s 20 of Arbitration Act was moved on 10.11.1979, learned Additional District Judge Sitapur held that the suit was beyond time. Argument of objector that suit for specific performance filed by M/s. Balaji Vegetable Products Private Limited and M/s. Balaji Textile Mills in the Court of Civil Judge Sitapur, is not beyond time as finding recorded by the Arbitrator that suit was beyond time, is not correct, has been repulsed by the learned Additional District Judge Sitapur. Keeping in view the fact that in the document dated 17.12.1975 it was agreed by the objector that the sale deed will be executed before 31.12.1975 or thereafter and since sale was executed on 8.1.1976, it cannot be said that the period of sale was indefinite and it may continue for unlimited period. The Arbitrator held that limitation must not exceed one month's time. Learned Additional District Judge Sitapur after considering various communications between the parties and the legal notices, recorded finding that since the period of legal notice ended on 18.2.1981 and suit has been filed after expiry of suit period, the Original suit No. 91/1981 shall be time barred. The plaintiff claimant had filed Suit No. 11/1979 for referring the issue to Arbitrator whereas, Original Suit No. 91/1981, was filed for specific performance of contract/sale agreement much later on, the suit filed by claimant.

40. However, learned Additional District Judge has shown his disagreement with the finding of the Arbitrator that Suit No. 91/1981 stands dismissed. Obviously, the finding of learned Additional District Judge is based on sound proposition of law. The suit could have been dismissed only by the competent Court itself or by the appellate forum. Hence while making observation with regard to dismissal of Suit No. 91/1981, the Arbitrator seems to have acted without jurisdiction. The Arbitrator should have confined himself within the terms of reference as well as the observations made by Karnataka High Court and not beyond that. Accordingly, learned Additional District Judge had rightly held that observations and directions of Arbitrator with regard to suit is beyond jurisdiction and not enforceable.

41. While deciding the issue No. 10, learned Additional District Judge Sitapur observed that the Arbitrator should not have tested his own fee fixing to the tune of Rs. 16,000/- as it is contrary to the terms of Reference dated 16.1.1989. The Arbitrator should also not have awarded costs while adjudicating the controversy. The observations made by the Arbitrator that costs will be borne out by the objector defendant, is not permissible. The learned Additional District Judge Sitapur had modified the Award to that extent with the finding that neither the honorarium nor fees nor costs could have been decided by the Arbitrator.

42. Subject to above, the issue No. 11 was decided in negative and the learned Additional district Judge had declined to refer the matter to decide afresh by the Arbitrator. Subject to modification, the Award of the Arbitrator was made the Rule of the Court. Learned Additional District Judge Sitapur, dismissed the suit for specific performance. The part of the Award with costs of arbitration proceeding will be borne by the objector defendant only separated from Award. Subject to modification as above, the Suit of claimant was decreed and the Award of Arbitrator was made the Rule of the Court.

43. The main thrust of argument of learned Counsel for the appellant is that learned Additional District Judge should not have travelled beyond the terms of reference made by the High Court.

44. It shall be appropriate to consider certain provisions of the Arbitration Act (in short the Act).

Clause (a) of Section 2 of the Act defines the word, "arbitration agreement" to mean a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

Clause (e) defines the word, "reference" to mean a reference to arbitration.

Section 8 of the Act empowers the Court to appoint arbitrator or umpire. Sub-section (2) of Section 8 provides that arbitrator appointed by the Court shall have all powers to act in the reference and to make an award as if he or they had been appointed by consent of all parties.

45. Section 13 defines power of arbitrator which is as under:

13. Powers to arbitrator.---The arbitrator or umpire shall, unless a different intention is expressed in agreement, have power to---

- (a) administer oath to the parties and witnesses appearing;
- (b) state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question for the opinion of the Court;
- (c) make the award conditional or in the alternative;
- (d) correct in an award any clerical mistake or error arising from any accidental slip or omission;
- (e) administer to any party to arbitration such interrogatories as may, in the opinion of the arbitrators or umpire, be necessary.

46. Section 14 provides that the award shall be signed by the parties not only with regard to dispute in a suit but also with regard to fees and charges payable in respect of the arbitration and award. For convenience, Section 14 is reproduced as under:

14. Award to be signed and filed.--(1)When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) Where the arbitrator or umpire state a special case under Clause (b) of Section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award.

Thus, the Arbitrator has got jurisdiction to express opinion not only with regard to dispute in a suit but also with regard to amount of fees and charges payable in respect of arbitration and award.

47. In pursuance of power conferred u/s 15 and 16 of the Act, the Court shall have power to modify an award or to remit the award for reconsideration upon such term as it thinks fit. Section 15 makes it obligatory for the Arbitrator to express opinion within a specified time. While remitting the matter, the Court may express the terms which it thinks proper for reconsideration of the award. It shall be appropriate to reproduce Section 16 of the Act as under:

16. Power to remit award.---The Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit--

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred; or

(b) where the award is so indefinite as to be incapable of execution; or

(c) where an objection to the legality of the award is apparent upon the face of it.

(2) Where an award is remitted under Sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court:

Provided that any time so fixed may be extended by subsequent order of the Court.

(3) An award remitted under Sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed.

48. An award may be set aside on the ground mentioned in Section 30 of the Act. For convenience Section 30 is reproduced as under:

30. Grounds for setting aside award.---An award shall not be set aside except on one or more of the following grounds, namely:

(a) that an arbitrator or umpire has misconducted himself or the proceedings

(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid u/s 35;

(c) that an award has been improperly procured or is otherwise invalid.

Thus, the Parliament to its wisdom as provided grounds on the basis of which an award may be set aside. Accordingly, while considering the validity of the impugned judgment with regard to award in question, the statutory ground given in Section 30 of the Act, is to be considered.

49. Section 38 deals with the procedure to resolve dispute with regard to arbitrator's remuneration or costs and provides that Court may consider the fees as well as costs as fees reasonable and Court may also direct to refund compliance of amount. For convenience, Section 38 of the Act is reproduced as under:

38. Disputes as to arbitrator's remuneration or costs.---(1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application in this behalf, order that the

arbitrator or umpire shall deliver the award to the applicant on payment into Court by the applicant of the fees demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitrator or umpire by way of fees such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(2) An application under Sub-section (1) may be made by any party to the reference unless the fees demanded have been fixed by written agreement between him and the arbitrator or umpire, and the arbitrator or umpire shall be entitled to appear and be heard on any such application.

(3) The Court may make such orders as it thinks fit respecting the costs of an arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

50. In the Case of Orissa Mining Corporation Ltd., (supra), their lordships of Hon"ble Supreme Court observed as under (Para 11) to quote:

When an agreement is filed in court and, order of reference is made then the claim as a result of the order of reference is limited to a particular relief and the arbitrator cannot enlarge the scope of the reference and entertain fresh claims without a further order of reference from the court.

However, in the present case, as observed, the letter and spirit of the judgment of Karnataka High Court was a mandate to entertain the issue discussed in its judgment and accordingly, the Arbitrator had rightly framed the additional issue apart from the issue referred by the Division Bench of this Court.

51 In the case of Santiram Ghosh (supra), their lordships of Hon"ble Supreme Court have held that Arbitrator may not travel beyond the reference and in case the Arbitrator goes beyond the reference, the award shall be illegal and not binding.

52. In the case of Dandasi Sahu (supra) their lordships of Hon"ble Supreme Court have held that award can be interfered only in limited circumstances as provided u/s 16 and 30 of the Act. It has been ruled that award has to be decided with circumspection.

53. In the case of Associated Engineering Co. (supra), Hon"ble Supreme Court held that Arbitrator granting claim not covered by the agreement, amounts to misdirecting and misconducting himself. In such a situation, it shall be presumed that the umpire acted unreasonably, irrationally and capriciously in ignoring the limits and the clear provisions of the contract.

54. In the case of Tarapore & Co.,(supra), their lordships of Hon"ble Supreme Court while holding that an agreement may confer jurisdiction by necessary implication, ruled that a dispute relating to or arising out of or in any way connected with contract has to be referred to Arbitrator. Where the subject

matter of dispute is covered by arbitration clause, there may not be patent lack of jurisdiction on the part of Arbitrator. Their lordships further held that where Arbitrator acts beyond jurisdiction, it may amount to misconduct Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir, but where the view taken by the Arbitrator is also possible Court should not interfere. It shall be reproduced relevant portion from the judgment of Tarapore & Co. (supra) as under:

29. We need not also enter into the controversy whether the present was the case where the arbitrators rejected the plea of non-liability sub silentio and for this reason the award cannot be regarded as incomplete--- the same having not been made "de praemissis", that is, concerning all the matters referred to. This inference may, however, be permissible here because of what has been opined in Santa Sila Devi v. Dharendra Nath Sen, and N. Chellappan v. Secretary, Kerala State Electricity Board. We would state the same as regards the argument of Shri Nariman that if the view taken by the arbitrators be also possible, interference by the Court is not permissible, to sustain which submission we are referred to State of A.P. v. R.V. Rayanim; Hind Builders v. Union of India; Hindustan Constructions Co. v. State of J. & K.; and Jagdish Chander Bhatia v. Lachhman Das Bhatia.

55. Aforesaid proposition of law of Hon"ble Supreme Court in the case of Tarapore & Company (supra) is based on earlier judgments of Hon"ble Supreme Court reported in (1990) 1 SCC 433 : M/s. Hind Builders Vs. Union of India, Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir, Jagdish Chander Bhatia Vs. Lachhman Das Bhatia, Jagdish Chander Bhatia v. Lachhman Das Bhatia..

56. Accordingly, Hon"ble Supreme Court keeping in view the fact that the opinion expressed by the Arbitrator was also possible, reversed the finding of High Court and upheld the view of Arbitrator.

57. In the case reported in Sudarsan Trading Co. Vs. Government of Kerala and Another, Sudarshan Trading Co. v. Governemnt of Kerala, Hon"ble Supreme Court held that any error committed by Arbitrator within jurisdiction, should not ordinarily be interfered.

58. In the case of M/s. G.S. Atwal (supra), their lordships of Hon"ble Supreme Court held that where Arbitrator enlarged dispute unilaterally in spite of objection by other side, participation of parties in the arbitration proceeding does not amount to acquiescence to jurisdiction of the arbitrator.

59. However, in the present case, the Arbitrator acted in view of the observations made by Karnataka High Court (supra) while framing additional issue. The additional issue framed by the arbitrator in compliance of observations made by the Karnataka High Court, does not seem to create a ground to record a finding that the Arbitrator has misconducted himself or travelled beyond the jurisdiction.

60. Hon"ble Supreme Court in the case reported in G. Ramachandra Reddy and Co. Vs. Union of India (UOI) and Another, held that award should ordinarily not be interfered. Interference is not warranted merely because Court could take a different view. While dealing with an award Court would not re-appreciate the evidence and award containing reasons also may not be interfered with unless they are found to be performance based on wrong proposition of law. If two views are possible, it is trite, that the court will refrain itself from interfering.

61. In the case of Arson Enterprises Ltd. (supra), relied upon by the learned Counsel for the respondent, Hon"ble Supreme Court has observed that the award may be set aside on the basis of three specific provisions given u/s 30 of the Act and re-appreciation of evidence by the Court, is not permissible. The error apparent at the face of record, does not mean to imply closure of documentary evidence and material on record. It shall be appropriate to reproduce appropriate para-34, 35, 36 and 37 as under:

34. Turning attention on to the other focal point, namely the interference of the court, be it noted that Section 30 of the Arbitration Act, 1940 providing for setting aside an award of an arbitrator is rather restrictive in its operation and the statute is also categorical on that score. The use of the expression `shall" in the main body of the Section makes it mandatory to the effect that the award of an arbitration shall not be set aside excepting for the grounds as mentioned therein to wit: (i) arbitrator or umpire has misconducted himself; (ii) award has been made after the supersession of the arbitration or the proceedings becoming invalid; and (iii) award has been improperly procured or otherwise invalid.

35. The above noted three specific provisions u/s 30 thus can only be taken recourse to in the matter of setting aside of an award. The legislature obviously had in its mind that the Arbitrator being the judge chosen by the parties, the decision of the Arbitrator as such ought to be final between the parties.

36. Be it noted that by reason of a long catena of cases, it is now a well settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the Court to reappraise the evidence is unknown to a proceeding u/s 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the Court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law: In the event however two views are possible on a question of law as well, the Court would not be justified in interfering with the award.

37. The common phraseology "error apparent on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view

the award or the reasoning contained therein cannot be examined. In this context, reference may be made to one of the recent decision of this Court in the case of State of Rajasthan Vs. Puri Construction Co. Ltd. and Another, wherein this Court relying upon the decision of Sudarsan Trading Co. Vs. Government of Kerala and Another, observed in paragraph 31 of the Report as below:

A court of competent jurisdiction has both right and duty to decide the lis presented before it for adjudication according to the best understanding of law and facts involved in the lis by the judge presiding over the court. Such decision even if erroneous either in factual determination or application of law correctly, is a valid one and binding inter parts. It does not, therefore, stand to reason that the arbitrator's award will be per se invalid and inoperative for the simple reason that the arbitrator has failed to appreciate the facts and has committed error in appreciating correct legal principle in basing the award. An erroneous decision of a court of law is open to judicial review by way of appeal or revision in accordance with the provisions of law. Similarly, an award rendered by an arbitrator is open to challenge within the parameters of several provisions of the Arbitration Act. Since the arbitrator is a judge by choice of the parties and more often than not a person with little or no legal background, the adjudication of disputes by an arbitration by way of an award can be challenged only within the limited scope of several provisions of the Arbitration Act and the legislature in its wisdom has limited the scope and ambit of challenge to an award in the Arbitration Act. Over the decades, judicial decisions have indicated the parameters of such challenge consistent with the provisions of the Arbitration Act. By and large the courts have disfavoured interference with arbitration award on account of error of law and fact on the score of misappreciation and misreading of the materials on record and have shown definite inclination to preserve the award as far as possible. As reference to arbitration of disputes in commercial and other transactions involving substantial amount has increased in recent times, the courts were impelled to have fresh look on the ambit of challenge to an award by the arbitrator so that the award does not get undesirable immunity. In recent times, error in law and fact in basing an award has not been given the wide immunity as enjoyed earlier, by expanding the import and implication of "legal misconduct" of an arbitrator so that award by the arbitrator does not perpetrate gross miscarriage of justice and the same is not reduced to mockery of a fair decision of the lis between the parties to arbitration. Precisely for the aforesaid reasons, the erroneous application of law constituting the very basis of the award and improper and incorrect findings of fact, which without closer and intrinsic scrutiny, are demonstrable on the face of the materials on record, have been held, very rightly, as legal misconduct rendering the award as invalid. It is necessary, however, to put a note of caution that in the anxiety to render justice to the party to arbitration, the court should not reappraise the evidences intrinsically with a close scrutiny for finding out that the conclusion drawn from some facts, by the arbitrator is, according to the understanding of the court, erroneous. Such exercise of power which can be

exercised by an appellate court with power to reverse the finding of fact, is alien to the scope and ambit of challenge of an award under the Arbitration Act. Where the error of finding of facts having a bearing on the award is patent and is easily demonstrable without the necessity of carefully weighing the various possible viewpoints, the interference with award based on erroneous finding of fact is permissible. Similarly, if an award is based by applying a principle of law which is patently erroneous, and but for such erroneous application of legal principle, the award could not have been made, such award is liable to be set aside by holding that there has been a legal misconduct on the part of the arbitrator. In ultimate analysis it is a question of delicate balancing between the permissible limit of error of law and fact and patently erroneous finding easily demonstrable from the materials on record and application of principle of law forming the basis of the award which is patently erroneous. It may be indicated here that however objectively the problem may be viewed, the subjective element inherent in the judge deciding the problem, is bound to creep in and influence the decision. By long training in the art of dispassionate analysis, such subjective element is, however, reduced to minimum. Keeping the aforesaid principle in mind, the challenge to the validity of the impugned award is to be considered with reference to judicial decisions on the subject.

The aforesaid propositions of law with regard to interference of award, reiterated in the case of Hari Om Maheshwari (supra) and H.P. State Electricity Board (supra), call for no elaborate discussion. It has been reiterated that only because other view is possible, the award should not be interfered since it is decided by a Judge of choice chosen by the parties.

62. In State of Rajasthan Vs. Nav Bharat Construction Company, Hon''ble Supreme Court held that Court can set aside the award but cannot re-appreciate the evidence and examine the correctness of conclusion.

63. In JT 2010 SC 409 Ravindra Kumar Gupta and Com. v. Union of India, Hon''ble Supreme Court held that finding recorded by the arbitrator on evidence giving elaborate reason could not be said to be either perverse or based on no evidence hence could not be set aside on re-appreciation of evidence led by parties before arbitrator.

Hon''ble Supreme Court had reiterated the law settled in its earlier judgment reported in the case of Puri Construction (supra), where their lordships held that award cannot be challenged on the ground that an alternative view of law is possible (para-28). It has been held by Hon''ble Supreme Court in the case of Puri Construction (supra) that an award rendered by an Arbitrator, is open to challenge within the parameter of provisions of Arbitration Act. It shall be appropriate to reproduce the relevant portion as under:

31. ...Such decision even if erroneous either in factual determination or application of law correctly, is a valid one and binding inter partes. It does not, therefore, stand to reason that the arbitrator''s award will be per se invalid and

inoperative for the simple reason that the arbitrator has failed to appreciate the facts and has committed error in appreciating correct legal principle in basing the award. An erroneous decision of a court of law is open to judicial review by way of appeal or revision in accordance with the provisions of law. Similarly, an award rendered by an arbitrator is open to challenge within the parameters of several provisions of the Arbitration Act. Since the arbitrator is a judge by choice of the parties, and more often than not, a person with little or no legal background, the adjudication of disputes by an arbitration by way of an award can be challenged only within the limited scope of several provisions of the Arbitration Act and the legislature in its wisdom has limited the scope and ambit of challenge to an award in the Arbitration Act. Over the decades, judicial decisions have indicated the parameters of such challenge consistent with the provisions of the Arbitration Act. By and large the courts have disfavoured interference with arbitration award on account of error of law and fact on the score of misappreciation and misreading of the materials on record and have shown definite inclination to preserve the award as far as possible.

64. Vide *Tata Finance Limited Vs. Ajaya Kumar Biswal and others*, (2000) 9 SCC 238 Hon''ble Supreme Court observed that it has been consistent view of Hon''ble Supreme Court that High Court would not justify in issuing order which would have the effect of frustrating or pre-empting arbitration award.

65. In a recent judgment reported in *Trimex International FZE Ltd. Dubai Vs. Vedanta Aluminium Ltd., India*, their lordships of Hon''ble Supreme Court held that the use of term "draft" in the contract does not mean that terms are not binding between parties. Even in the absence of written agreement it can be inferred from the documents signed by the parties in the form of emails, letters, telegram etc., with regard to intention of parties. Minor differences would not affect the intention of parties which is essential to find if there was concluded contract or not.

Accordingly, reliance placed by the Arbitrator on the judicial pronouncement of Karnataka High Court between the parties in consequential framing of two additional issues does not suffer from any infirmity or illegality. The view taken by the Arbitrator relying upon the judgment of Karnataka High Court, seems to be correct approach.

66. A perusal of the impugned judgment shows that the learned Additional District Judge had modified the award with regard to fees determined by the Arbitrator. The judgment and order of the learned Additional District Judge, seems to be not a correct approach in accordance with law.

In a recent judgment Court reported in *State of U.P. Vs. Ram Sajivan and Others*, Hon''ble Supreme Court held that the sole arbitrator may be entitled to determine his own fee received from parties. Accordingly, the decision of the Arbitrator determining the fees, does not seem to suffer from any illegality or impropriety. To that extent, the judgment of learned Additional District Judge, is

not sustainable and requires to be modified.

67. Otherwise also, the statutory provisions referred hereinabove, seems to empower the Arbitrator to decide the fees. While adjudicating the controversy, the Arbitrator has decided the fees, which does not seem to suffer from any impropriety or illegality in view of the recent pronouncement of Hon"ble Supreme Court as well as statutory provisions referred to hereinabove.

68. There is one another aspect of the matter. Though, the impugned agreement seems to have been signed by the appellant Sri R.N. Agarwal on behalf of the Company, but consistently, stand has been taken that the agreement was signed in his individual capacity. The appellant seems to have committed fraud and abused the process of Court. It is not permissible to appellant to take different stand in Karnataka High Court and different before the Arbitrator.

69. The perusal of judgment of Karnataka High Court, at the face of record shows that the appellant while filing writ petition as the Managing Director of M/s. Shree Balaji Textile Mills (P) Limited, Bangalore, has not taken plea that the contract was signed in his individual capacity. While approaching the Karnataka High Court, he categorically claimed the benefit of agreement on behalf of M/s. Shree Balaji Textile Mills (P) Limited, Bangalore and claimed change in the name of license but at no stage of proceeding pending in the Trial Court, Sitapur or in this Court, he had informed by amending the pleading with regard to right claimed by him on behalf of Company M/s. Shree Balaji Textile Mills (P) Limited, Bangalore, in pursuance of agreement in question. Such an act on the part of the appellant, is a serious misconduct and amounts to abuse of process of law and also commission of fraud.

70. "Fraud" means an intention to deceive. The expression "fraud" involves two elements, deceit and injury to the person deceived. Even if in some cases there is not benefit to the deceiver, in appropriate case, the second condition shall be deemed to be satisfied. (Vide Dr. Vimla Vs. Delhi Administration, and Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.,

71. The collusion or conspiracy to deprive the right of others in relation to a property shall render transaction ab initio void. Fraud and deception are synonymous. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Vide Ram Chandra Singh Vs. Savitri Devi and Others, Fraud is proved when it is shown that a false representation has been made knowingly, or in disbelief in its truth, or recklessly and carelessly whether it is true or false. Fraud avoids all judicial acts ecclesiastical or temporal. (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, In Lazarus Estate Ltd. v. Besalay 1956 All.E.R. 349, the Court observed without equivocation that no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.

72. Their lordships of Hon"ble Supreme Court in the case reported in Andhra

Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, Andhra Pradesh State Financial Corporation v. GAR Re-Rolling Mills and Anr.; and (1994) 2 SCC State of Maharashtra and Ors. v. Prabhu, has observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the Courts are obliged to do justice by promotion of good faith. Equity is also known to prevent the law from the crafty evasions and sub-letties invented to evade law.

73. In United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, their lordships of Hon''ble Supreme Court observed to quote:

Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries.

74. In the case reported in Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, Hon''ble Supreme Court observed as under:

Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.

75. In a recent judgment of Hon''ble Supreme Court reported in 2010 AIR SCW 50: Dalip Singh. v. State of U.P. and Ors., their lordships after considering earlier judgment, has deprecated the conduct of such litigants who approach the Court by concealing material facts. It shall be appropriate to reproduce the relevant portion of the judgment of Dalip Singh (*supra*):

9. In K. D. Sharma. v. Steel Authority of India Ltd. and Ors. (2008) 12 SCC 481 : 2008 AIR SCW 6654 , the Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in G. Jayashree and Others Vs. Bhagwandas S. Patel and Others,

76. In view of the above, to sum up,

(a) The impugned award does not seem to suffer from any impropriety or illegality and seems to be based on correct appreciation of law and fact subject to modification that instead of Rs. 6,50,000.00, the appellant shall be deemed to discharge his liability for an amount of Rs. 18,71,829.33 as is apparent from the face of record.

(b) In view of the pronouncement of Hon''ble Supreme Court in the case of State of U.P. Vs. Ram Sajivan and Others, the Arbitrator was entitled to decide his fees. Accordingly, the order of learned Additional District Judge is liable to be modified to this extent and finding recorded by the Arbitrator with regard to payment of

fees is liable to be upheld. However, the fees shall be liable to be borne by both the parties.

(c) Sri R.N. Agarwal has not signed agreement dated 8.1.1976 in his personal capacity rather, he signed it on behalf of M/s. Balaji Textile Mills. The appellant R.N. Agarwal seems to not approach the courts with clean hands. While approaching the Karnataka High Court or filing the regular suit for specific performance of contract, the affidavits and pleadings were signed and made by Sri R.N. Agarwal himself on behalf of M/s. Balaji Textile Mills and M/s. Balaji Vegetable Products. Virtually, the appellant had acted with intent to commit fraud and thus, abused the process of law.

77. As discussed hereinabove, the appellant had taken different stand before the Arbitrator, and this Court and the Karnataka High Court. The appellant took a stand that he signed the agreement in his individual capacity but in Karnataka High Court, it has been stated that agreement was signed on behalf of M/s. Balaji Product. As observed (supra), such act on the part of the appellant not only amounts to commission of fraud but also abuse of process of law. Hence it is a fit case where the appellant deserves to pay costs in view of the judgment of Hon'ble Supreme Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), Salem Advocate Bar Association (II), v. Union of India. The appellant, by commission of fraud and manipulation coupled with abuse of process of law, has been succeeded to retain and run the factory without discharging his liabilities since last about 34 years.

78. Though, in view of commission of fraud by the appellant, it is not a fit case where this Court should interfere with regard to amount but for the ends of justice, to limited extent, we propose to interfere with regard to finding for the amount paid by M/s. Balaji Textile Mills as well as the Arbitrator's entitlement to decide his fees.

In view of the above, the appeal is dismissed with costs on all counts affirming the order of the learned Additional District Judge, Sitapur and the award except the total liability discharged by M/s. Balaji Textile Mills and M/s. Balaji Vegetable Products which comes to Rs. 18,71,829.33 (supra) and the fees decided by the Arbitrator is upheld which shall be borne by the parties equally. To that extent, award stands modified. The costs is quantified to Rs. 5,00,000.00 (five lakhs) which shall be deposited by the appellant in this Court within one month. Out of Rs. 5,00,000.00, the amount of Rs. 2,50,000.00 shall be remitted to Mediation Centre, Lucknow, and rest amount of Rs. 2,50,000.00, shall be withdrawn by the respondents. In case the costs is not deposited, it shall be recovered as arrears of land revenue by the District Magistrate concerned, within two months and be remitted to this Court. The Registry of this Court, to take follow up action.