HIGH COURT FOR THE STATE OF TELANGANA

C.M.A.Nos.488 and 489 OF 2022 AND COMCA. NO.31 OF 2022

CMA No.488 of 2022:

Between :

Chittari Padma, W/o. Chittari Ravinder,
Aged:53 years, Occ : Business,
R/o. H.No.8-3-686, Bhagathnagar,
Karimnagar and another

...Appellants

And

Chinthala Adi Reddy, S/o. Malla Reddy
Aged: about 65 years, Occ : Business
R/o. H.No.8-3-680, Bhagathnagar,
Karimnagar and 8 Others.

...Respondents

DATE OF COMMON ORDER PRONOUNCED: 10.01.2023

HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
HONOURABLE SRI JUSTICE J. SREENIVAS RAO

1. Whether Reporters of Local newspapers may be allowed to see the judgment? — No

2. Whether the copies of judgment may be marked to Law Reporters/Journals — Yes

3. Whether Their Lordships wish to see the fair copy of the judgment? — No

*** HONOURABLE SRI JUSTICE P. NAVEEN RAO**
AND
HONOURABLE SRI JUSTICE J. SREENIVAS RAO
+ C.M.A.Nos.488 & 489 OF 2022 AND
COMCA. NO.31 OF 2022

% DATED 10TH JANUARY, 2023

CMA No.488 of 2022:
Between :

\# Chittari Padma and Another

...Appellants

And

$ Chinthala Adi Reddy, S/o. Malla Reddy Aged: about 65 yrs, Occ : Business R/o. H.No.8-3-680, Bhagathnagar, Karimnagar and 8 Others.

...Respondents

<Gist:
>Head Note:

! Counsel for the Petitioners : Petitioner's counsel in both CMAs & respondent counsel In COMCA : Sri Aarifa Imran Khan.

^Counsel for Respondents : Respondent's counsel in both Both CMAs & petitioner Counsel in COMCA : Sri Bankatla Mandhani

? CASES REFERRED:

1. 2014 SCC OnLine Delhi 4834
2. (2022) 2 SCC 382
3. CMA No.1264 of 2012, CMA 42 of 13 and CRP No.2835 of 2016 and CMA No.1264 of 2012, dt :27.1.2022
4. 2022 SCC OnLine TS 25, 29, dated 07.01.2022
5. (2022) 1 SCC 131
6. (2019) 15 SCC 131
7. (2015) 3 SCC 49
8. 2022 SCC OnLine TS 1539
9. AIR 1968 Gujarath 157
10. AIR 1968 SC 676
11. (2006) 13 SCC 481
12. (2006) 11 SCC 181
13. (2018) 15 SCC 210
14. (2012) 5 ALD 715
15. (2018) 11 SCC 328
16. (2022) SCC Online 1243
17. (2000) 6 SCC 359
18. (2000) 4 SCC 368
19. AIR (1966) SC 1300
20. (1985) 4 SCC 519
21. 2007 (2) APLJ 290
22. (1974) 1 SCC 567

HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
HONOURABLE SRI JUSTICE J. SREENIVAS RAO

C.M.A.Nos.488 and 489 OF 2022 AND
COMCA. NO.31 OF 2022

COMMON JUDGMENT: *{Per the Hon'ble Sri Justice J. Sreenivas Rao }*

Brief facts in C.M.A. No.488 & 489 of 2022 are as under:

The appellants have filed these two appeals aggrieved by the common order passed in Arbitration OP (in short 'AOP) No's.554 of 2014 and 594 of 2016 on the file of the Court of Principal District Judge, Karimnagar, dated 28.09.2022.

2. For the sake of convenience, the parties hereinafter are referred to as they were arrayed in Arbitration O.P. No's.554 of 2014 and 594 of 2016.

3. The respondents/claimants herein have initiated arbitration proceedings under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the Act' for brevity) *vide* Arbitration Application No.183 of 2014 before this Court and this Court was pleased to dispose of the Arbitration Application on 27.05.2015 appointing Sri Narayana Chawla, District and Sessions Judge (Retd.) as Sole Arbitrator.

4. The respondents 1 to 3 herein have filed Claim Petition in Arbitration O.P. No.594 of 2016 before the Arbitral Tribunal claiming the following reliefs:

> ***a**) Declaring that proportionate shares of the parties in the partnership i.e. Petitioner No.1 holds 25%, Petitioner No.2 holds 25%, Petitioner No.3 holds 10% and Respondent holds 40% share.*
>
> ***b**) That the partnership Firm M/s Mamatha 70 MM A/c Theatre, stood dissolved on 27.05.2014.*
>
> ***c**) To direct the respondent to pay a sum of Rs.30,95,400/- (Rupees Thirty Lakhs Ninety Five Thousand Four Hundred only) towards share of petitioners as shown in Schedule B along with interest from 01.08.2015 till realization @ Rs.18% P.A. on Rs.30,95,400/- and in default of payment of said amount, Page 43 of 64 AOP 554 of 2014 & AOP 594 of 2016 PDJ Karimnagar the same be deducted from out of the share of the respondent payable from the sale proceeds of Schedule A specified assets of the dissolved Firm.*
>
> ***d**) To direct Respondent to pay a sum of Rs.78,000/- from 01.08.2015 onwards towards rents realized with interest @ 18% PA till realization.*
>
> ***e**) To direct Respondent to pay interest @ 18% PA to petitioners on Rs.6,00,000/- security deposit amount lying with the Respondent till surrender of lease or sale of asset.*
>
> ***f**) That Schedule specified asset of the Firm, i.e. land and building along with its machinery and furniture be sold by Executing Court in the following manner, i.e. :*
>
> *i) Sale be held by way of inter se bidding between the partners by fixing a reserved bidding not below the basic market value as on the date of sale and if the highest bidder fails to pay the same or in the case of disagreement – Alternatively –*
>
> *ii) Sell the same by way of public auction by fixing a reserved bidding for all or to be conducted by the Executing Court in accordance with law and that either of the parties is to be at liberty to bid at the sale.*
>
> *iii) And that out of the receipt of sale proceeds thereof, the same be distributed in the ratio of respective shares i.e. to Petitioner No.1 @ 25%, Petitioner No.2 @ 25%, Petitioner No.3 @ 10% and Respondent@ 40%, after deducting the expenses of sale etc.,*

AND pass such other or further orders as this Hon"ble Court may deem fit and proper in the circumstances of the case.

5. In the said claim petition, the respondents 1 to 3 herein contended that they along with appellant No.1 herein constituted a partnership firm under the name and style of M/s Mamatha 70 MM, A/c Theatre *vide* partnership deed dated 04.11.1996. As per the said partnership deed, the appellant No.1 holds 40% share, respondent No's. 1, 2 and 3 hold 25%, 25%, and 10% shares respectively. They further contended that claim schedule property is the partnership property along with all the attached moveable and immoveable properties situated on the land admeasuring Ac.0.22 gts in Sy.No.1104 of Karimnagar bearing House No.9-1-170 of Karimnagar District. The respondents further contended that on 01.09.2014 themselves and appellant No.1 gave the cinema theatre on lease in favour of one Bonala Srikanth on monthly rent of Rs.80,000/- and the canteen and cycle stand at the rate of Rs.25,000/- per month for a period of two years. They further contended that without their consent, the appellant No.1 gave license of the cinema theatre to one PadigelaRamulu on monthly rent of Rs.1,05,000/- and cycle stand and canteen on monthly rent of Rs.30,000/-. The appellant No.1 has also received an amount of Rs.6,00,000/- towards interest free security deposit and she withheld the said amounts without being accounted. They further stated that the appellant No.1 did not render accounts from 01.01.2012 and due to the same, they lost confidence in the appellant No.1 and it is not possible to continue as partners. They

further stated that they informed the appellant No.1 of their intention to dissolve the partnership firm. Accordingly, they issued a notice on 27.05.2004 to the appellant No.1 informing that the firm should dissolve from the date of service of notice and also they issued a paper publication on 07.09.2014 informing the dissolution of the firm to the general public.

6. The records reveals that even before initiation of the arbitration proceedings by the claimants in Arbitration Application No.1 of 2015 before Arbitral Tribunal, they filed Arbitration O.P. No.554 of 2014 on the file of the Court of Principal District Judge, Karimnagar, under Section 9 of the Act seeking the following interim reliefs against the appellant No.1 & 2 herein and others :

> *(a) to grant temporary injunction restraining the respondent No.1 from in any way alienating the Schedule-A properties of respondent No.2 Firm to any third party,*
>
> *(b) to direct respondent No.1 to deposit Rs.25,20,000/- received towards the rent as shown in the Schedule-B and continues to deposit Rs.1,35,000/- from the month of September, 2014 till finalisation of Arbitration Proceedings,*
>
> *(c) to appoint a Joint Receiver, namely, petitioner No.1 along with respondent No.1 to take over management of Schedule-A properties and collect the rents and profits and make an inventory of partnership properties etc., and*
>
> *(d) to pass such other suitable order or orders.*

7. In Arbitration Application No.1 of 2015, the appellant No.1 filed counter statement denying the claim of the respondents 1 to 3 herein *inter alia* contending that the appellant No.1 is the absolute owner of land admeasuring Ac.0.22 gts. in Sy.No.1104 situated at Karimnagar and the same was purchased through registered sale deed dated 04.06.1993 from KoduriMallaiah and others and since then, she has been in peaceful possession and enjoyment of the said property with absolute rights. She further contended that prior to entering into the partnership deed with respondents 1 to 3, she obtained necessary permissions for conversion of the land for non-agricultural purposes and constructed cinema theatre namely M/s Mamatha 70 MM, A/c Theatre, Karimnagar. She further stated that the partnership firm is having limited rights with the business of exhibiting films in cinema theatre but not having any rights in immovable properties viz., share in land, building etc.,. She also contended that the 1st respondent without having any manner of right executed the registered sale deed dated 16.12.2014 in favour of Chitti Bhaskar Reddy in respect of schedule property i.e., 1/4th share in the property bearing House No.9-1-170 having plinth area of 8000 sq.feet (ACC) and 2400 sq.ft (RCC) in total area of 2622 sq. yards. The appellant No.1 further contended that she paid provident fund to the employees and other expenses for the maintenance of the theatre. The claim of the respondents over the property under schedule-A is not maintainable and they are not entitled to claim any rights over the said Schedule-A property. The appellant

No.1 further stated that the consent of the respondent No's.1 to 3 is only in respect of granting lease hold rights of cinema theatre to Bonala Srikanth. The said Srikanth filed a suit in O.S. No.190 of 2013 before the V Addl. District Judge, Karimnagar seeking injunction not to vacate him without due process of law and the same is pending and appellant No.1 prayed to dismiss the claim made by the respondents 1 to 3 before the Arbitral Tribunal.

8. The Arbitral Tribunal considering the contentions of both the parties and oral and documentary evidence of P.W.1 & R.W.1 and Ex's.A.1 to A.24 & Ex's.B.1 to B.20 on record, partly allowed the Arbitration Application No.1 of 2015 and granted the following reliefs by its Award dated 10.10.2016 :

1. *Petitioner No.3, Raji Reddy, is held entitled to claim and recover back the amount lying to his credit as on 01.09.2012 as capital with 'Simple' interest at the rate of 18% p.a. from 01.09.2012 up to the date of payment to him, as per Clause 4 of Partnership Deed-Ex.A2.*

2. *He is entitled to the amount towards rents as mentioned in the Directions of Schedule No.3.*

3. *He shall bear his own costs.*

4. *The respondent is directed to make payment of the amount as referred to above to Rajiv Reddy on or before 10.12.2016.*

5. *The payment should preferably be made through any Nationalised Bank only.*

6. *Petition so far as P-1, Adi Reddy and P-2 Mallikarjuna are concerned, is dismissed with their costs and no relief is granted to them. (However, it is made clear that they could be granted Relief/Reliefs as raja Reddy has been, as and when they get cancelled their respective Sale Deeds under which they have transferred their respective share/shares).*

> 7. *Adi Reddy and Mallikarjun shall have to pay to the Respondent Rs.45,000/- (Rupees Forty five thousand only) each towards costs, besides bearing their own costs.*
>
> 8. *Payments of the amounts should be made by them to the Respondent on or before 10-11-2016.*
>
> 9. *Payments by them should be made as directed above, preferably through any Nationalised Bank only.*
>
> 10. *Respondent shall bear her own costs.*
>
> 11. *Respondent as always has been shall have exclusive right, interest and possession over property of every nature, directly or indirectly connected or concerned with the Theatre.*
>
> 12. *None of the petitioners shall have any claim, right or interest in the property of any sort directly or indirectly connected or concerned with the Theatre.*

9. Questioning the said award, passed by the Arbitral Tribunal, dated 10.10.2016, the respondents 1 to 7 in CMA 489 of 2022 have filed Arbitration O.P. No.594 of 2016 under Section 34 of the Act on the file of the Court of Principal District Judge, Karimnagar. The learned Principal District Judge, Karimnagar clubbed Arbitration O.P. No.554 of 2014 which was already pending before the said Court filed by the very same respondents herein under Section 9 of the Act with Arbitration O.P. No. 594 of 2016. The learned Principal District Judge, Karimnagar after considering the contentions and the documents on record allowed the Arbitration O.P. No.594 of 2016 and set-aside the arbitral award dated 10.10.2016 passed by the Arbitral Tribunal in Arbitration Application No.1 of 2015 holding that the learned Arbitrator without considering the provisions of Section 29 of the Partnership Act and also without properly considering the evidence on record, passed the award. The learned

Principal District Judge allowed the Arbitration O.P. No.554 of 2014 filed under Section 9 of the Act in part granting reliefs (a) & (c), restraining the appellants in C.M.A. No.488 of 2022 by way of temporary injunction from alienating the petition Schedule-A property for a period of three months or till such time as extended by the said Court on a petition moved by any of the parties in the event of the matter not being brought before the Arbitrator and further held that the petitioners and the respondent No.1 therein should give in writing for taking over the management of Schedule-A property by petitioner No.1 and respondent No.1 therein and file the same before the said Court by 10.10.2022, failing which, the said Court shall be constrained to appoint a Receiver from among the Advocates. Thereafter on 10.10.2022 the learned Principal District Judge, Karimnagar appointed one Sri P. Latchi Reddy as Receiver to manage the Schedule-A property.

10. Questioning the above said common order passed by the learned Principal District Judge, Karimnagar in Arbitration O.P. No.554 of 2014 and in Arbitration O.P. No.594 of 2016 dated 28.09.2022 the appellant/ appellants filed the above two appeals viz., C.M.A. No. 488 of 2022 and C.M.A No. 489 of 2022 before this Court.

11. Sri Imran Khan, learned Senior Counsel representing Smt. Aarifa Imran Khan vehemently contended that the Court below is not having jurisdiction to pass the orders in Section 9 petition. Admittedly, as on the date of passing of order under Section 9 petition, the learned

Arbitrator has already passed an Award on 10.10.2016. Questioning the said award the respondents herein have already filed Arbitration O.P. No.594 of 2016 under Section 34 of the Act and in such circumstances, the Court below ought to have dismissed the Arbitration O.P. No.554 of 2014 which is not maintainable under law.

11.1 The learned Senior Counsel further contended that Section 9 of the Act deals with passing of interim measures etc. and is limited in its invocation to 'before' or 'during' arbitral proceedings or 'after the making of the arbitral award' but not after the said "Arbitral Award" has been set aside.

11.2 The learned counsel further contended that in view of the specific provision, the Court below ought not to have granted the relief claimed in Arbitration O.P.No.554 of 2014. Admittedly, the Court below set-aside the award passed by the Arbitral Tribunal. Hence, the orders passed in Arbitration O.P. No.554 of 2014 by the learned Principal District Judge is without jurisdiction. In support of his contention, the learned Senior Counsel relied upon the Full Bench Judgment of the Hon'ble High Court of Delhi in ***Nussli Switzerland Ltd., Vs. Organizing Committee Common Wealth Games, 2010***[1]FAO (OS) 121/2014, dated 18.09.2014.

12. *Per contra*, Sri GhanShyamdasMandani counsel for the respondents representing Sri BankatlalMandani contended that the

[1]2014 SCC OnLine Delhi 4834

learned Principal District Judge, Karimnagar has rightly granted interim injunction under Section 9 of the Act in Arbitration O.P. No.554 of 2014 and there is no illegality and judicial error in the said order to interfere by this Court exercising the powers vested under Section 37 of the Act. He further contended that pursuant to the orders passed by the Court below the petitioners in Arbitration O.P. No.554 of 2014 have filed Memo on 10.10.2022 mentioning the names of three Senior Advocates viz., Sri P.Latchi Reddy, Sri P.Madhusudhan Rao and Smt.Rupi Reddy, Geetha Reddy or any other Advocate to appoint as "**Official Receiver**" to manage the Schedule-A property. However, they submitted that Sri P.Latchi Reddy, Advocate may be appointed as "**Receiver**". The counsel for the respondent No.1 therein presented before the Court below and he reported 'no objection'. Taking into consideration of the same, Sri P. Latchi Reddy was appointed as Receiver to take over the management of Schedule-A property. In view of no objection given by the learned counsel for the appellant No.1 herein before the Court below for appointment of 'Receiver' to manage the Schedule-'A' property, the appellant No.1 is not entitled to question the orders passed in Arbitration Application No.554 of 2014 dated 28.09.2022 and the appeal in C.M.A. No.488 of 2022 filed by the appellants is not maintainable under law and the same is liable to be set aside.

The contentions of the respective counsels in C.M.A. No.489 of 2022 are as under:

13. The learned Senior Counsel Sri Imran Khan contended that the Court below failed to consider the cardinal principles as enunciated

under Section 34 of the Act and conditions made therein for setting aside the well considered award passed by the Arbitral Tribunal. He further contended that the respondents/claimants did not file any evidence before the learned Arbitrator about their capital investment in the partnership firm or their contribution towards the costs of construction and maintenance of theatre and in the absence of proving their claim by producing necessary evidence the Court below incorrectly placed burden on the appellant though the bounden duty is on the claimants to prove their claims by adducing necessary evidence under law.

13.1 The learned Senior Counsel further contended that the immovable property is not part and parcel of partnership deed and the respondents/claimants are not entitled to claim any rights over the said immovable properties. He further contended that there is no averment about the partnership deed in the lease deed executed by the appellant No.1 and respondent No's.1 to 3 herein in favour of Sri Bonala Srikanth and also there is no schedule to the said lease deed. He further contended that the affidavit relied by the claimants under Ex.A.3 is a forged and fabricated one. The learned Judge wrongly came to a conclusion and gave finding that the appellant No.1 herein was disclosing immovable property in the income tax returns of partnership firm and that it became the property of partnership firm in the absence of any specific clause in the partnership deed.

13.2 He lastly contended that the Court below exceeded its jurisdiction to set-aside the well- considered award passed by the Arbitral Tribunal though the scope of Section 34 of the Act is very limited. Hence, the order passed by the Court below is contrary to the provisions of Section 34 of the Act and contrary to law.

13.3 The learned Senior Counsel relied upon the Judgments of the Hon'ble Supreme Court in Civil Appeal No's.2826-2827 of 2016, **Welspun Speciality Solutions Limited Vs. Oil and Natural Gas Corporation Ltd,**[2]and another judgment of Division Bench of this Court in **Mohd. Akheel Ahmed & 12 others, Vs. M/s. P.S.R. Constructions & 4 others, dated 27.01.2022,**[3]and in Civil Miscellaneous Appeal No's. 358 and 164 of 2013, **Kasu Ram Reddy and 2 others Vs. M/s. Sri Homes Another**[4]**.**

14. Sri GhanShyamdasMandani, learned counsel for the respondents contended that the Court below after considering the contentions of both the parties and documentary evidence placed on record, has rightly exercised its jurisdiction conferred under Section 34 of the Act and set aside the award passed by the learned Arbitrator and there is no illegality, irregularity and jurisdictional error committed by the Court below.

14.1. The learned counsel further contended that the Partnership deed specifically mentioned respective shares held by them in moveable and

[2](2022) 2 SCC 382,
3. C.M.A. No.1264 of 2012, C.M.A. No.42 of 2013 and C.R.P. No.2835 of 2016 and CMA No.1264 of 2012, dated 27.1.2022

[4]2022 SCC OnLine TS 2529, dated 07.01.2022

immovable properties pertaining to M/s Mamatha 70 MM A/c theatre and in consequence thereof, all the partners are unequivocally liable for assets and liabilities. In pursuance of the said partnership deed only the claimants invested huge amounts and constructed the theatre. When the appellant No.1 failed to render accounts properly, disputes arose between them and they initiated arbitration proceedings. The learned Arbitrator without properly considering the documentary evidence filed by the claimants passed the award and the same was rightly set-aside by the Court below.

14.2. The learned counsel further contended that the income tax returns filed by the partnership firm clearly show that the claimants are also having their respective shares in the immovable properties. Hence, the allegations/grounds raised by the appellant No.1 that the claimants are not having any share in the immovable properties of M/s Mamatha 70 MM A/c theatre and they are having only share in the moveable properties is a fundamental fallacy in the submission and only running the cinema theatre is at issue is arrant falsehood and lastly he contended that with an intention to defeat the rights over the properties covered under partnership deed, the appellants are trying to alienate the properties to 3rd parties and the Court below has rightly allowed the arbitration O.P. No.554 of 2014 and appointed the "Receiver" to manage the cinema theatre and by virtue of the same no prejudice is going to be caused to the appellants.

14.3. In support of his contentions, the learned counsel relied upon the following judgments:

(1) **Delhi Airport Metro Express Pvt Ltd., Vs. Delhi Metro Rail Corporation Ltd.,**[5]

(2) **Ssangyong Engineering and Construction Company Ltd., Vs. NHAI**[6],

(3) **Associate Builders Vs. Delhi Development Authority**[7],

(4) **CCS Infotech Limited Vs. Director ESD (Mee Seva)**[8],

(5) **KeshavalalLallubhai Patel Vs. PatelBhailalNarandas and others**[9],

(6)**Commissioner of Income Tax, Mandhya Pradesh, Nagpur and BhandraVs. Diwas Cine Corporation**[10].

(7)**Shreedhar Govind Kamerkar Vs. Yeshwant Govind Kamerkar**[11],

(8) **Mc.Dermott International Inc. Vs. Burn Standard C.Ltd., and Others**[12].

(9) **Ultratech Cement Limited, Vs. Rajasthan Rajya Vidyut Utpadham Nigam Limited**[13],

(10) **I. Sudershan Rao and Others Vs. Evershine Builders Pvt. Ltd.Bhandra, West Mumbai and another**[14]

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[5](2022) 1 SCC 131
[6](2019) 15 SCC 131
[7](2015) 3 SCC 49
[8]2022 SCC Online TS 1539
[9]AIR 1968 Gujarath 157
[10]AIR 1968 SC 676
[11](2006) 13 SCC 481
[12](2006) 11 SCC 181
[13](2018) 15 SCC 210
[14](2012) 5 ALD 715

(11) **KinariMullick and Another Vs. Ghansham Das Damani[15],**

(12) **Sepco Electric Power Construction Corporation Vs. Power Mech Projects Ltd.[16]**,

(13) **Kunhayammed And others Vs. State of Kerala**[17],

(14) **V.H. Patel Company and Others Vs. HirubhaiHimabhai Patel and Others**[18].

(15) **AddankiNarayanappa and Another Vs. Bhaskara Krishnappa (Died)**[19] and his heirs and others.

(16) **Sunil Siddardhabai Vs. Commissioner of Income Tax[20]**

(17) **Kallepally Krishnam Raju Vs. The Commissioner & IG of Registration & Stamps, A.P., Hyderabad and another[21]** and

(18) **Katikara Chintamani Dora and Others Vs. GunterddiAnnamanaidu and Others**[22].

15. Having heard the learned Senior Counsel for the appellants and learned counsel for the respondents, the points that arise for consideration in these two appeals are as follows:

(1) Whether the Court below is having jurisdiction to pass orders under Section 9 of the Act granting injunction restraining the appellants from alienating the petition

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[15](2018) 11 SCC 328,
[16](2022) SCC Online 1243
[17](2000) 6 SCC 359
[18](2000) 4 SCC 368
[19]AIR (1966) SC 1300
[20](1985) 4 SCC 519
[21]2007 (2) APLJ 290, (HC)
[22](1974) 1 SCC 567

schedule-A property and also to appoint the Receiver to manage the said property when the award passed by the Arbitral Tribunal in Arbitration Application No.1 of 2015 is set-aside?

(2) Whether the Court below has rightly followed the parameters and the powers conferred under Section 34 of the Act while setting aside the award passed by the Arbitral Tribunal?

(3) To what relief?

Point No.1:

16. The records reveal that the claimants and the appellant No.1 herein have jointly entered into the partnership deed on 04.11.1996 under Ex.A.2. It is mentioned that first partner Chittari Padma has been carrying business under the name and style of M/s Mamatha 70 MM A/c Theatre in Sy.No.1104 at Collector complex road, Karimnagar along with the partners Sri ChittariBalaiah and 5 others under a deed of partnership dated 24.03.1994 and due to financial issues the said partners have retired from the partnership firm with effect from 31.08.1995 and they executed Release deed dated 10-09-1995 in favour of continuing partner. It is further mentioned that thereafter the partners 1 to 4 have agreed to carry on and continue the said business to exhibit the films under the name and style of M/s Mamatha 70 MM A/c Theatre by taking over the assets and liabilities of the erstwhile firm and entered into the partnership deed dated 04.11.1996. In the said partnership deed, it is mentioned that the appellant No.1 is having 40%

share and claimants 1 and 2 are having 25% share each and claimant No.3 is having 10% share respectively.

17. During the existence of partnership firm, disputes arose between the parties and the claimants have filed Arbitration Application O.P. No.554 of 2014 under Section 9 of the Act seeking injunction restraining the respondents therein from alienating the schedule properties. During the pendency of the said O.P. the claimants initiated arbitration proceedings before the learned Arbitrator and the claimants have filed claim statement claiming various reliefs including share in the moveable and immovable properties i.e. including the land and building situated within the premises bearing Municipal No.9-117 (9-1-170) admeasuring 0-22 gts. situated at Collector road, Bhagat Road, Karimnagar popularly known as M/s Mamatha 70 MM A/c Theatre. The same was opposed by the appellants herein contending that the immovable property is exclusive property of the appellant No.1 only and the claimants are not entitled to claim any share in the Schedule-A property and the claimants are included as partners in the partnership deed only for running cinema theatre, as the said theatre is existing and functioning as on the date of entering into the partnership deed dated 04.11.1996.

18. The Arbitral Tribunal passed the award and partly allowed the claims of the claimants. The Arbitral Tribunal by its award dated 10-10-2016 held that the appellant No.1 herein is having exclusive right, interest and possession over the property covered under schedule-A.

The said award was set-aside by the learned Principal District Judge in Arbitration O.P.No.594 of 2016 on the ground that the learned Arbitrator without considering the provisions of the Partnership Act and without verification of accounts, disputed aspects of accounts, passed the award. The Court below while setting aside the award passed by the learned Arbitrator in Arbitration Application No.1 of 2015 granted relief sought by the claimants in Arbitration O.P.No.554 of 2014 under Section 9 of the Act restraining the appellant No.1 from alienating the Schedule-A property by its order dt.28.09.2022 and also passed order on 10.10.2022 appointing one Sri P.Latchi Reddy as "Receiver" to take over the management of the Schedule-A property.

19. The learned counsel for the appellant has rightly contended that once the award passed by the Arbitrator is set-aside, the Court below ought not to have granted injunction under Section 9 of the Act. The main thrust of Section 9 of the Act, which specifically says that a party may, before or during arbitral proceedings or at any time after the making of the arbitral award is entitled to make application for grant of interim measure. In the instant case, the claimants filed Section 9 application, seeking injunction restraining the appellant No.1 from alienating the Schedule-A property before commencement of Arbitral proceedings. When the said proceedings were pending, arbitration proceedings were commenced and the learned Arbitrator passed the award on 10.10.2016 and the same was questioned by the claimants under Section 34 of the Act by way of Arbitration in O.P. No.594 of 2016

and the said award dated 10.10.2016 passed by the Arbitral Tribunal was set-aside by the Court below on 28.09.2022. When once the award is set-aside, predominantly Section 9 protection cannot be granted in favour of the claimants.

20. The Full Bench of the Hon'ble Delhi High Court in **NUSSLI SWITZERLAND LTD. V/s. ORGANIZING COMMITTEE COMMON WEALTH GAMES**in FAO (OS) 121 OF 2014 held as follows :

> "17. We highlight the catchwords of Section 9 : A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a court.
>
> 18. A plain textual reading of the above indicates that at any stage of the proceedings, before, during or after the making of the arbitral award (but before it is executed) a party to an arbitration agreement may approach the Court seeking interim measures. The word 'but' can either be a conjunction or a proposition or a noun or an adverb. In the textual setting in which the word 'but' finds itself in the section, it is obviously not used as a noun or an adverb. Whether the word „but' is read as a conjunction or proposition would make no difference because if read as a conjunction, the section would read : „A party may, before or during arbitral proceedings or at any time after the making of the arbitral award and not before it is enforced" and if read as a proposition, the section would read : A party may, before or during arbitral proceedings or at any time after the making of the arbitral award except before it is enforced".
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> 19. As noted by the Division Bench of the Bombay High Court Section 2(h) of the Arbitration and Conciliation Act, 1996 defines „party" to mean „a party to an arbitration agreement". And thus literally read the section could mean that any party, irrespective of whether or not it has or can have an enforceable claim in its favour, can avail the remedy under Section 9 of the Arbitration and Conciliation Act, 1996.
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> 20.In paragraph 12 and 13 of its opinion, the Division Bench of the Bombay High Court has opined as under:-
>
>> " 12. Two facets of Section 9 merit emphasis. The first relates to the nature of the orders that can be passed under clauses (i) and (ii). Clause (i) contemplates an order appointing a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings. Clause (ii) contemplates an interim measure of protection for: (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement; (b) securing the amount in dispute in the arbitration; and (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration; (d) an interim injunction or the appointment of a receiver; and (e) such other interim measure of protection as may appear to the Court to be just and convenient. The underlying theme of each one of the sub-clauses of clause (ii) is the immediate and proximate nexus between the interim measure of protection and the preservation, protection and securing of the subject-matter of the dispute in the arbitral proceedings. In other words, the orders that are contemplated under clause (ii) are regarded as interim

measures of protection intended to protect the claim in arbitration from being frustrated. The interim measure is intended to safeguard the subject-matter of the dispute in the course of the arbitral proceedings. The second facet of Section 9 is the proximate nexus between the orders that are sought and the arbitral proceedings. When an interim measure of protection is sought before or during arbitral proceedings, such a measure is a step in aid to the fruition of the arbitral proceedings. When sought after an arbitral award is made but before it is enforced, the measure of protection is intended to safeguard the fruit of the proceedings until the eventual enforcement of the award. Here again the measure of protection is a step in aid of enforcement. It is intended to ensure that enforcement of the award results in a realisable claim and that the award is not rendered illusory by dealings that would put the subject of the award beyond the pale of enforcement. Now it is in this background that it is necessary for the Court to impart a purposive interpretation to the meaning of the expression "at any time after the making of the arbitral award but before it is enforced in accordance with section 36". Under Section 36, an arbitral award can be enforced under the Code of Civil Procedure in the same manner as if it were a decree of the Court. The arbitral award can be enforced where the time for making an application to set aside the arbitral award under Section 34 has expired or in the event of such an application having been made, it has been refused. The enforcement of an award ensures to the benefit of the party who has secured an award in the arbitral proceedings. That is why the enforceability of an award under Section 36 is juxtaposed in the context of two time frames, the first being where an application for setting aside an arbitral award has expired and the second where an application for setting aside an arbitral award was made but was refused. The enforceability of an award, in other words, is defined with reference to the failure of the other side to file an application for setting aside the award within the stipulated time limit or having filed such an application has failed to establish a case for setting aside the arbitral award. Once a challenge to the arbitral award has either failed under Section 34 having been made within the stipulated period or when no application for setting aside the arbitral award has been made within time, the arbitral award becomes enforceable at the behest of the party for whose benefit the award ensures. Contextually, therefore, the scheme of Section 9 postulates an application for the grant of an interim measure of protection after the making of an arbitral award and before it is enforced for the benefit of the party which seeks enforcement of the award. An interim measure of protection within the meaning of Section 9(ii) is intended to protect through the measure, the fruits of a successful conclusion of the arbitral proceedings. A party whose claim has been rejected in the course of the arbitral proceedings cannot obviously have an arbitral award enforced in accordance with Section 36. The object and purpose of an interim measure after the passing of the arbitral award but before it is enforced is to secure the property, goods or amount for the benefit of the party which seeks enforcement.

13.The Court which exercises jurisdiction under Section 34 is not a court of first appeal under the provisions of the Code of Civil Procedure. An appellate court to which recourse is taken against a decree of the trial Court has powers which are co- extensive with those of the trial Court. A party which has failed in its claim before a trial Judge can in appeal seek a judgment of reversal and in consequence, the passing of a decree in terms of the claim in the suit. The court to which an arbitration petition challenging the award under Section 34 lies does not pass an order decreeing the claim. Where an arbitral claim has been rejected by the arbitral tribunal, the court under Section 34 may either dismiss the objection to the arbitral award or in the exercise of its jurisdiction set aside the arbitral award. The setting aside of an arbitral award rejecting a claim does not result in the claim which was rejected by the Arbitrator being decreed as a result of the judgment of the court in a petition under Section 34. To hold that a petition under Section 9 would be maintainable after the passing of an arbitral award at the behest of DIPL whose claim has been rejected would result in a perversion of the object and purpose

underlying Section 9 of the Arbitration and Conciliation Act, 1996. DIPL's application under Section 9, if allowed, would result in the grant of interim specific performance of a contract in the teeth of the findings recorded in the arbitral award. The interference by the Court at this stage to grant what in essence is a plea for a mandatory order for interim specific performance will negate the sanctity and efficacy of arbitration as a form of alternate disputes redressal. What such a litigating party cannot possibly obtain even upon completion of the proceedings under Section 34, it cannot possibly secure in a petition under Section 9 after the award. The object and purpose of Section 9 is to provide an interim measure that would protect the subject-matter of the arbitral proceedings whether before or during the continuance of the arbitral proceedings and even thereafter upon conclusion of the proceedings until the award is enforced. Once the award has been made and a claim has been rejected as in the present case, even a successful challenge to the award under Section 34 does not result an order decreeing the claim. In this view of the matter, there could be no occasion to take recourse to Section 9. Enforcement for the purpose of Section 36 as a decree of the Court is at the behest of a person who

seeks to enforce the award."

20.1. In**Ultratech Cement Limited Vs. Rajasthan Rajya Vidyut Utpadan Nigam Limited**[23]**,** Hon'ble Supreme Court held:

6. The question that arises for adjudication before us is as to whether the proceedings initiated under Section 9 of the Act (whilst the arbitral proceedings were pending) survive, after the arbitral proceedings come to a closure. Insofar as the instant aspect of the matter is concerned, the answer thereto has to emanate from Section 9 of the Act. The above provision is extracted hereunder:

"**9. *Interim measures, etc. by court*.**—(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a court—

(*i*) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(*ii*) for an interim measure of protection in respect of any of the following matters, namely—

(*a*) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(*b*) securing the amount in dispute in the arbitration;

(*c*) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(*d*) interim injunction or the appointment of a receiver;

(*e*) such other interim measure of protection as may appear to the court to be just and convenient,

[23](2018) 15 SCC 210

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the court may determine.

(3) Once the arbitral tribunal has been constituted, the court shall not entertain an application under sub-section (1), unless the court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious."

A perusal of the above provision reveals that interim measures can be allowed in favour of a party (who moves an application under Section 9 of the Act), either before the commencement of the arbitration proceedings, or during the pendency of the arbitral proceedings, and even after the making of the arbitral award "…but before it is enforced in accordance with Section 36…". It is therefore apparent, that an interim arrangement, can be made under Section 9 of the Act, not only before and during the pendency of the arbitral proceedings, but also after the arbitral award has been pronounced.

7. As to whether the orders passed by the different courts, which culminated in the two orders, extracted hereinabove, dated 13-12-2013 [*Mangalam Cement Ltd.* v. *Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*, 2013 SCC OnLine SC 1333] and 14-3-2014 [*Mangalam Cement Ltd.* v. *Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*, 2014 SCC OnLine SC 1692] , would continue even after the passing of the arbitral award, in our considered view, would depend on the nature of the prayer made by the appellant, when the application under Section 9 was filed, before the Court concerned. We have extracted hereinabove the prayer made by the appellant in its Section 9 application. A perusal thereof reveals that the interim injunction was sought "…till adjudication of the dispute arises between the parties by appointing the arbitrator by the applicant as per Clause 9 of the agreement dated 15-10-2004 signed by and between the applicant and the respondent, passing of the award by the arbitrator, and also till enforcement of the said award…". It is therefore apparent that the interim prayer made by the appellant under Section 9 of the Act in the very first instance was till the enforcement of the award. It is undoubtedly apparent from a perusal of Section 9 of the Act, extracted above that the enforcement of the award can be effected only under Section 36 of the Act. The aforesaid stage has not yet emerged. The stage presently is of the interregnum, between the passing of the award, and the enforcement of the award under Section 36 of the Act.

20.02.In **I. Sudershan Rao and Others Vs. Evershine Builders Pvt. Ltd., Bandra, West Mumbai and another**[24] Hon'ble Division Bench held:

8. Thus, the first point to be considered is whether Section 9 of the Act has no application to a situation where the award is passed and consequently the present AOP is not maintainable. Section 9 of the Act provides for grant of interim relief by the court and the object of this provision is too well known to require any mention here. The opening words of Section 9 read "a party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a court" and the section then sets out various types of interim reliefs which can be sought by a party. It is clear that the words "at any time after

[24] 2012 (5) ALD 715 (DB)

> the making of the arbitral award but before it is enforced in accordance with Section 36" clearly show that the interim reliefs stipulated in the said section can be sought even after the passing of the award but before it becomes enforceable.
>
> 9. Section 36 of the Act enacts that an arbitral award becomes enforceable like a civil court decree, where the time for filing an application under Section 34 of the Act for setting it aside has expired or when such an application if already filed, is dismissed by the court. In the present case, AOP.Nos.713 of 2009, 328 of 2011 and 329 of 2011 which are filed against the award in question are still pending and therefore in view of Section 36, it follows that the award has not become enforceable. In the above circumstances and in the light of the plain language of Section 9, Sri Ramakrishna Reddy's contention under this point cannot be accepted.
>
> 23. It can thus be said that an application under Section 9, when a petition is already pending under Section 34 in the same matter, may be filed as an independent application or by way of an interlocutory application. Mere violation of Proviso (a) to Rule 8 is not fatal as that provision has to be construed as only directory and not mandatory. Of-course, in certain cases an independent application under Section 9 may be filed suppressing the material facts relating to the passing of the award and its consequences and in such a case the court may interfere and do justice by passing appropriate orders. In AOP No.750 of 2011, the second respondent has pleaded all the facts relating to the petitions pending under Section 34 of the Act and his grievance and thus there is no suppression of facts. For the aforesaid reasons, this point is also decided against the appellants.
>
> 24. The third point is whether the trial court in an application under Section 9 after the passing of the award should not have granted an ex parte interim injunction or an ex parte interim order restraining appellants from alienating the disputed property when the relief of specific performance was refused.
>
> 28. Coming to the argument of Sri Ramakrishna Reddy on the third point, it is true that the arbitral tribunal refused the relief of specific performance, but its award is under challenge in the application filed by the second respondent under Section 34 of the Act and that has still to be decided. It cannot be presumed at this stage that the award will be confirmed by the trial court. What should be noted is that whether the refusal of relief of specific performance by the arbitral tribunal is right has to be decided by the court. In such a situation, the trial court cannot be faulted for exercising power under Section 9 to grant temporary injunction to preserve the disputed property till adjudication of the second respondent's petition under Section 34 of the Act. No provision orprecedential authority has been brought to our notice to hold that just because the arbitral tribunal refused the relief of specific performance, the court under Section 9 has no power to pass an order for preservation of the property though of-course that will be subject to the final orders which may be passed by the court in the petition or application under Section 34 with respect to the award.

21. It emerges from the above judgments, Section 9 of the Act envisages an application for the grant of interim measure of protection before initiation of arbitral proceedings during and after passing an arbitral award before it is enforced. This Court already observed *supra*

that the claimants filed Section 9 application before commencement of arbitral proceedings seeking injunction restraining the appellant No.1 from alienating the Schedule-A property and also for other reliefs. When the said proceedings were pending, arbitration proceedings commenced and the Arbitral Tribunal passed the award on 10.10.2016. The same was questioned by the claimants under Section 34 of the Act by way of Arbitration O.P. No.594 of 2016. The said award was set-aside by the Court below on 28.09.2022. When once the award is set-aside, predominantly Section 9 protection cannot be granted infavour of the claimants. Moreover, the application filed under Section 9 was seeking protection before commencement of Arbitral proceedings.

22. In view of the foregoing discussion, we are of the considered view that the order dt.28.19.2022 passed in Arbitration O.P. No.554 of 2014 by the Court below insofar as to the extent of granting injunction restraining the appellant No.1 herein from alienating the Schedule-A property is erroneous. Therefore, the order in O.P. No.554 of 2014 is set aside and the consequential order passed on 10.10.2022 appointing the Receiver, is hereby set-aside. However, in the event if the appellant No.1 creates any thirdparty rights in respect of Schedule-A property, the same shall be subject to the outcome of the arbitration proceedings if initiated by the claimants and the appellants herein, are not entitled to claim any equities. The Point No.1 is answered accordingly.

Point No.2:

23. In **Welspun Speciality Solutions Ltd.,** (supra)**,** paragraph-23 reads as under:

> ***"23.****Before we analyse the award, we need to first ascertain the scope of Section 34 of Arbitration Act, before the 2015 amendment, which provided for certain specific grounds for challenge. Section 34, as it existed, reads as under:*
>
> *34 Application for setting aside arbitral award.*
>
> *— (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*
>
> *(2) An arbitral award may be set aside by the Court only if— …*
>
> *(b) the Court finds that—*
>
> *(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*
>
> *(ii) the arbitral award is in conflict with the public policy of India.*
>
> *(Emphasis supplied)*
>
> *The limited grounds provided under Section 34 of the Act, has been interpreted by this Court on numerous occasions. In this case at hand, the challenge of award is based on the fact that the same is against the public policy and patent illegality. Public policy as a ground of challenge has always been met with certain scepticism. The phrase 'public policy' does not indicate 'a catch-all provision' to challenge awards before an appellate forum on infinite grounds. However, the ambit of the same is so diversly interpreted that in some cases, the purpose of limiting the Section 34 jurisdiction is lost. This Court's jurisprudence also shows that Section 34(2)(b) has undergone a lot of churning and continue to evolve. The purpose of Section 34 is to strike a balance between Court's appellate powers and integrity of the arbitral process."*

23.1 .In **Mohd. Akheel Ahmed** (supra),paragraphs 19 and 22 read as follows:

> ***"19.*** *If parties to a contract have dispute(s) flowing out of terms of contract, they can avail legal remedy to enforce the terms of contract, to claim damages, to recover money, etc. However, in order to avoid long drawn litigation, they can also set out to resolve the dispute(s) by alternative modes, such as, arbitration. Once the contract envisages resolution of inter se dispute(s) through the medium of arbitration, law requires parties to resort to such mode only. A comprehensive statutory framework is put in place by Act, 1996 to regulate resolution of disputes through arbitration. Act, 1996 is a complete code dealing with all aspects of resolution of a*

dispute through the medium of arbitration. It is based on the PNR, &Dr.GRR,J CMA Nos.1264 of 2012 & 42 of 2013 bedrock of the principle i.e, least judicial intervention in arbitral proceedings. Once the agreement between parties envisage resolution of a dispute by resorting to arbitration, the Act do not encourage civil litigation and assigns finality to a dispute after the Arbitrator passes award, and binding on parties to the arbitration, by creating only a small window to assail the award. However, the reality is, on everything and anything of arbitration, recourse is made to the courts of law defeating the very objective of the Act to encourage parties to a contract to avail alternative dispute resolution which can save costs and time and lessen the burden on Courts of law.

22. *The scope of power of Civil Court under Section 34 is no more res-integra, in view of the decision of Hon'ble Supreme Court in McDermott International Inc Vs Burn Standard Company Limited5. In the said decision and the decisions that followed, the Hon'ble Supreme Court held that in a petition under Section 34 of the Act, 1996, the Court cannot correct errors of Arbitrator. It can only quash the award. Paragraphs 51 and 52 of McDermott International Inc read as under:*

> *"52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."   (emphasis supplied)*

23. *The decision of Hon'ble Supreme Court in M.Hakeem (supra) puts the issue beyond pale of doubt. It is affirmation of statement of law that stood the test of times. On review of precedent decisions, Hon'ble Supreme Court held that Section 34 of the Act, 1996 cannot be held to include within it a power to modify the award. The Hon'ble Supreme Court held further:*

> *"16. What is important to note is that, far from Section 34 being in the nature of an appellate provision, it provides only for setting aside awards on very limited grounds, such grounds being contained in sub-sections (2) and (3) of Section 34. Secondly, as the marginal note of Section 34 indicates, "recourse" to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-sections (2) and (3). "Recourse" is defined by P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn.) as the enforcement or method of enforcing a right. Where the right is itself truncated, enforcement of such truncated right can also be only limited in nature. What is clear from a reading of the said provisions is that, given the limited grounds of challenge under sub-sections (2) and (3), an application can only be made to set aside an award. This becomes even clearer when we see sub-section (4) under which, on receipt of an application under sub-section (1) of Section 34, the (2006) 11 SCC 181 PNR, &Dr.GRR,J CMA Nos.1264 of 2012 & 42 of 2013 court may adjourn the Section 34 proceedings and give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or take such action as will eliminate the grounds for setting aside the arbitral award. Here again, it is important to note that it is the opinion of the Arbitral*

> *Tribunal which counts in order to eliminate the grounds for setting aside the award, which may be indicated by the court hearing the Section 34 application.*

23.2. In **Kasu Rami Reddy** (supra)Paragraph 30 reads as follows:

> ***"30**. The appellate Court cannot sit in appeal and re-appreciate the evidence in the award of the learned Arbitrator. It can interfere with only when it is patently illegal. But in the case on hand, the learned Arbitrator passed a well-reasoned award. Therefore, the interference 2015 (3) SCC 49 2014 (9) SCC 263 of the appellate Court is not warranted and thus, the order of the trial Court in A.O.P.No.325 of 2009 dated 06.11.2012 is liable to be set aside by duly confirming the award of the learned Arbitrator."*

23.3 In **Delhi Airport Metro Express Private Limited (***supra),* the Hon'ble Apex Court considered the scope of judicial intervention in an Appeal preferred against the Arbitration Award, what is '*public policy*' and what is '*patent illegality*'. The Hon'ble Supreme Court considered the Judgments in **Associate Buildings** and **Ssangyong Engineering and Constructions Company Ltd.** The Hon'ble Apex Court extracted the Paragraphs 23 to 30 of the Judgment in **Ssangyong engineering and Construction Company** and held as follows:

> "23. What is clear, therefore, is that the expression public policy of India, whether contained in Section 34 or in Section 48, would now mean the fundamental policy of Indian law as explained in paragraphs 18 and 27 of Associate Builders (supra), i.e., the fundamental policy of Indian law would be relegated to the Renusagar understanding of this expression. This would necessarily mean that the Western Geco (supra) expansion has been done away with. In short, Western Geco (supra), as explained in paragraphs 28 and 29 of Associate Builders (supra), would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Courts intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in paragraph 30 of Associate Builders (supra).
>
> 24. It is important to notice that the ground for interference insofar as it concerns interest of India has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the most basic notions of morality or justice. This again would be in line with paragraphs 36 to 39 of Associate Builders (supra), as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.
>
> 25. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paragraphs 18 and 27 of Associate Builders (supra), or

secondly, that such award is against basic notions of justice or morality as understood in paragraphs 36 to 39 of Associate Builders (supra). Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco (supra), as understood in Associate Builders (supra), and paragraphs 28 and 29 in particular, is now done away with.

26. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the Page 31 of 64 AOP 554 of 2014 & AOP 594 of 2016 PDJ Karimnagar law. In short, what is not subsumed within the fundamental policy of Indian law, namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

27. Secondly, it is also made clear that re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

28. To elucidate, paragraph 42.1 of Associate Builders (supra), namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of Associate Builders (supra), however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award. (Emphasis supplied)

29. The change made in Section 28(3) by the Amendment Act really follows what is stated in paragraphs 42.3 to 45 in Associate Builders (supra), namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrators view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2A).

30. What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of Associate Builders (supra), while no longer being a ground for challenge under public policy of India, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse".

24. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by courts while examining the validity of the arbitral awards. The limited grounds available to courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the courts. There is a disturbing tendency of courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object,

which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

25. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression „patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression „patent illegality". What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34 (2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fairminded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing Page 33 of 64 AOP 554 of 2014 & AOP 594 of 2016 PDJ Karimnagar with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality"."

23.4In Para No.6 of the**Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara(supra),** Hon'ble Supreme Court held:

"A partner may, it is true, in an action for dissolution insist that the assets of the partnership be realised by sale of its assets, but where in satisfaction of the claim of the partner to his share in the value of the residue determined on the footing of an actual or notional sale property is allotted, the property so allotted to him cannot be deemed in law to be sold to him."

23.5In Para Nos.3 & 4 in **KeshavlalLallubhai Patel**(supra),Hon'ble Gujarat High Court held as under:

"3. The law of partnership draws a distinction between retirement of a partner and dissolution of a firm as dissolution of partnership between all the partners, Partnership is the jural relation between partners who are collectively called a firm and when this jural relation is snapped between all the partners inter se, that constitutes dissolution of the firm.

4. There is this a clear and well recognised distinction between retirement of a partner from a firm and dissolution of a firm. These terms are not synonymous either in their judicial content or their legal implications and consequences. They are treated separately by the law of partnership: one is dealt with in Section 32 while the other is dealt with in Chapter VI commencing with Section 39. If as alleged by defendants Nos. 5 to 7 retirement of a partner from a firm has the effect of bringing about dissolution of the partnership between all the partners it is difficult to

> imagine what should have induced the Legislature to treat retirement as a separate topic under Chapter V and not regard it as one of the modes of dissolving the firm dealt with under Chapter VI. Section 32 (1) (c) and 43 would also in that event overlap for a notice of retirement under Section 32(1)(c) would have the effect of dissolving the partnership between all the partners, that is of dissolving the firm which according to Section 43 must needs be done by a notice of dissolution."

23.6In Para No.9 of **Kallepally Krishnam Raju** (supra),High Court of Gujarat held as under:

> "From a reading of Section 14 of the Act, any property can be thrown into the partnership stock without any formal document and would, therefore, become the property of the firm and such throwing property into the Firm would not require any registration under the Registration Act and no stamp duty is required".

23.7. In**V.H. Patel Company & others** (supra),it is said:

> "The Apex Court held that the law is clear that where there is a clause in the Articles of Partnership or agreement or order referring all the matters in difference between the partners to arbitration, arbitrator has power to decide whether or not the partnership shall be dissolved and to award its dissolution".

23.8 In**Mc.Dermott International Inc.** (supra),Hon'ble Supreme Court held:

> **"52.** The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

23.9In **Sunil Siddharthbhai**(supra)and **Kartikeys Vs. Sarabhai Vs. Commissioner of Income Tax** in Civil Appeal Nos.1841 and 1777 of 1981[25], Hon'ble Supreme Court held:

[25](1985) 4 SCC 519

"11. In support of the submission that there is no "transfer" in the general sense of that term when a partner brings his personal assets into the firm as his contribution towards its capital, Learned Counsel points out that a partnership firm is not a separate legal entity and that the assets owned by the partnership are collectively owned by the partners. We have no hesitation in accepting that proposition for in *Malabar Fisheries Co* v. *CIT* [(1979) 4 SCC 766 : 1980 SCC (Tax) 49 : (1979) 120 ITR 49] this Court observed: (SCC p. 775, para 18)

> "... it seems to us clear that a partnership firm under the Indian Partnership Act, 1932 is not a distinct legal entity apart from the partners constituting it and equally in law the firm as such has no separate rights of its own in the partnership assets and when one talks of the firm's property or firm's assets all that is meant is property or assets in which all partners have a joint or common interest."

12. Our attention has been invited to *CIT* v. *Hind Construction Ltd.* [(1972) 4 SCC 460 : 1974 SCC (Tax) 149 : (1972) 83 ITR 211] In that case the assessee entered into a partnership and as its share of the capital it transferred its stock of machinery to the partnership firm. This Court held that when the assessee made over its machinery to the partnership firm there was no sale and the assessee did not derive any income. In *CIT* v. *Janab N. Hyath Batcha Sahib* [(1969) 72 ITR 528 (Mad)] the Madras High Court held that when a partner introduces his property into a partnership firm as his contribution to its capital the transaction does not involve a sale of the property. The High Court referred to Section 14 of the Indian Partnership Act and observed:

> "When a partnership is formed for the first time and one of the members of the partnership brings into the firm assets, they become the property of the firm, not by any transfer, but by the very intention of the parties evinced in the agreement between them to treat such property belonging to one or more of the members of the partnership as that of the firm."
>
> The view that when a partner hands over a business asset to the partnership firm as his contribution to its capital he cannot be said to have effected a sale was also taken by the Allahabad High Court in *M.C. Kackkar* v. *CIT* [(1973) 92 ITR 87 (All)] , the Kerala High Court in *CIT* v. *C.M. Kunhammed* [(1974) 94 ITR 179 (Ker)] and by the Madras High Court in *CIT* v. *Abdul Khader Motor and Lorry Service* [(1978) 112 ITR 360 (Mad)] . We find no difficulty in accepting that proposition. But while the transaction may not amount to a sale, can it be described as a transfer of some other kind? Illustrations of other kinds of transfer are provided by sub-section (47) of Section 2 of the Income Tax Act which defines the expression "transfer" in relation to a capital asset as including "the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law". The definition is inclusive merely, and does not exhaust other kinds of transfer. Its inclusive character was overlooked by the Madras High Court in *Abdul Khader* [(1978) 112 ITR 360 (Mad)] and in *CIT* v. *H. Rajan and H. Kannan* [(1984) 149 ITR 545 (Mad)] . In both cases the High Court confined itself to considering whether the transaction before it was covered by any of the express terms used in the definition, that is to say, sale, exchange, relinquishment or extinguishment, and taking the view that it did not fall under any of them it held that there was no transfer.

14. Learned Counsel for the assessee has attempted to draw an analogy between the position arising when a personal asset is brought by a partner into a partnership as his contribution to the partnership capital and that

which arises when on dissolution of the firm or on retirement a share in the partnership assets passes to the erstwhile partner. It has been held by this Court in *CIT* v. *Dewas Cine Corp.* [AIR 1968 SC 676 : (1968) 2 SCR 173 : (1968) 68 ITR 240] , *CIT* v. *Bankey Lal Vaidya* [(1971) 1 SCC 355 : (1971) 3 SCR 406 : (1971) 79 ITR 594] and recently in *Malabar Fisheries Co.* [(1979) 4 SCC 766 : 1980 SCC (Tax) 49 : (1979) 120 ITR 49] as well as by the Punjab and Haryana High Court in *Kay Engineering Co.* v. *CIT* [(1971) 82 ITR 950 (P&H)] , the Kerala High Court in *CIT* v. *Nataraj Motor Service* [(1972) 86 ITR 109 (Ker)] and the Gujarat High Court in *CIT* v. *MohanbhaiPamabhai* [(1973) 91 ITR 393 (Guj)] that when a partner retires or the partnership is dissolved what the partner receives is his share in the partnership. What is contemplated here is a share of the partner qua the net assets of the partnership firm. On evaluation, that share in a particular case may be realised by the receipt of only one of all the assets. What happens here is that a shared interest in all the assets of the firm is replaced by an exclusive interest in an asset of equal value. That is why it has been held that there is no transfer. It is the realisation of a pre-existing right. The position is different, it seems to us, when a partner brings his personal asset into the partnership firm as his contribution to its capital. An individual asset is the sole subject of consideration. An exclusive interest in it before it enters the partnership is reduced on such entry into a shared interest."

23.10In**Sepco Electric Power Construction Corporation**(supra)Hon'ble Supreme Court held:

"**18.** The Appellant has unsuccessfully made an attempt to evaluate the impugned award to demonstrate that the award is against the fundamental policy of India. It is contended that no documents were produced during the arbitration proceedings. It is not for this Court to sit in appeal over the impugned award at this stage while deciding an appeal under Article 136 of the Constitution of India and examine the adequacy of the evidence before the Arbitral Tribunal.

19. Section 36 of the Arbitration Act Provides:—

"36. Enforcement.—(1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Civil Procedure Code, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub section (2) for stay of the operation of the arbitral award, the court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Civil Procedure Code, 1908 (5 of 1908).

Provided further that where the Court is satisfied that a prima facie case is made out that,—

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under Section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015."

20. On the other hand, Section 9 of the Act provides the amendment as follows:—

"9. Interim measures, etc. by Court.— (1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a Court:—

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement:

(b) securing the amount in dispute in the arbitration:

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a court passes an order for any interim measure of protection under subsection (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the court may determine.

(3) Once the arbitral tribunal has been constituted, the court shall not entertain an application under sub-section (1), unless the court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious."

21. There is no hard and fast rule that an application made earlier in point of time must be heard before an application made later in point of time.

22. Both the applications under Section 9 filed by the Respondent and the application for stay under Section 36(2) filed by the Appellant relate to the same impugned award.

23. Even though, the applications may be independent applications, there are common factors required to be considered for both the applications of the Respondent under Section 9 and the application of the Appellant under Section 36(2). The jurisdiction of this Court under Section 9 is wide. A party may apply to a Court for interim measures before the commencement of Arbitral proceedings, during Arbitral proceedings or at any time after the making of the Arbitral Award, but before it is enforced in accordance with Section 36 of the Arbitration Act.

> **24.** Section 9 expressly empowers the Court to pass orders securing the amount in dispute in the arbitration and/or any interim measure or protection as may appear to the Court to be just and convenient."

23.11 In **Kunhayammed and Others Vs State of Kerala and Another[26],** Hon'ble Supreme Court held:

> **"7.** The doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognised. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system. On more occasions than one this Court had an opportunity of dealing with the doctrine of merger. It would be advisable to trace and set out the judicial opinion of this Court as it has progressed through the times.
>
> **12.** The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.

24. The Court below considering the contentions of the respective parties, evidence on record, and also after considering the judicial precedents held by the Hon'ble Apex Court and High Courts referred to above rightly exercised its powers conferred under Section 34 of the Act and set-aside the award dated 28.09.2022 passed by the Arbitral Tribunal in Arbitration Application No.1 of 2015 by giving cogent findings and also specifically holding that the Learned Arbitrator without applying the provisions of Partnership Act, held that the respondents/ claimant Nos. 1 and 2 are not entitled to their respective shares in the income as they alienated their shares. On the other hand, the Learned

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[26] (2000)6 SCC 359

Arbitrator held that the respondents/claimant Nos. 1 and 2 will be entitled to get their shares only if they cancel their respective sale deeds under which they transferred their respective shares. The reasons given by the Learned Arbitrator are contradicting with each other and this Court do not find any illegality, irregularity and jurisdictional error in the impugned order passed in Arbitration O.P. No.594 of 2016. Point No.2 is answered accordingly.

Point No.3:

25. Accordingly, the C.M.A.No.488 of 2022 is allowed and C.M.A.No.489 of 2022 is dismissed without costs.

COM.C.A No.3:

26. Insofar as COM.C.A No.31 of 2022 is concerned, the claimants are the appellants in the said appeal. They filed the appeal questioning the order passed by the Court below in Arbitration O.P.No.554 of 2014 dated 28.09.2022 to the extent of directing the respondent No.1 therein to deposit Rs.25,20,000/- and to continue to deposit Rs.1,35,000/- per month from September, 2014 onwards. Admittedly, the order passed in Arbitration Application No.554 of 2014 is questioned by the respondents 1 and 2 therein by way of C.M.A. No.488 of 2022 before this Court and this Court set-aside the said order and allowed the said C.M.A. as referred *supra*. The entitlement of the amounts as claimed by the claimants in Arbitration Application No.554 of 2014 has to be adjudicated and determined in the arbitral proceedings, if initiated by the claimants especially when the appellant No.1 is disputing the claims

made by the claimants. In the absence of the same, the appellants in COM.CA. No.31 of 2022 are not entitled for the said reliefs.

27. In view of the orders passed in CMA No.488 of 2022, the appeal filed by the appellants in COM.CA. No.31 of 2022 becomes redundant and the same is accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

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JUSTICE P. NAVEEN RAO

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JUSTICE J. SREENIVAS RAO

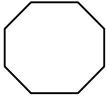
Date: 10-01-2023

Skj.

Note

L.R. Copy to be marked

HONOURABLE SRI JUSTICE P. NAVEEN RAO
AND
HONOURABLE SRI JUSTICE J. SREENIVAS RAO



C.M.A.Nos.488 and 489 OF 2022 AND
COMCA. NO.31 OF 2022

Date : 10-01-2023.

Skj.