IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

&

THE HONOURABLE MR. JUSTICE K.HARIPAL

FRIDAY, THE 09TH DAY OF APRIL 2021 / 19TH CHAITHRA, 1943

Arb.A.No.37 OF 2020

AGAINST THE ORDER IN OPARB 270/2018 DATED 02-03-2020 OF III ADDITIONAL DISTRICT COURT, KOZHIKODE

APPELLANT/PETITIONER IN O.P.(ARB):

KASIM V.K.
AGED 53 YEARS
S/O.KUNHABDULLA HAJI, POST CHEEKKONNUMMAL WEST,
NARIPPATTA AMSOM, VATAKARA TALUK, KOZHIKODE-673 567.

BY ADVS.
SRI.B.KRISHNAN
SHRI.R.PARTHASARATHY

RESPONDENT/RESPONDENT IN O.P.(ARB):

M.ASHRAF
AGED 51 YEARS,
S/O.AMMED, MARUTHERI HOUSE, POST CHEEKKONNUMMAL WEST,
NARIPPATTA AMSOM, VATAKARA TALUK, KOZHIKODE-673 567.

BY ADV. C.P. MOHAMMED NIAS (COVEATOR)

THIS ARBITRATION APPEAL HAVING BEEN FINALLY HEARD ON 18-12-2020, THE COURT ON 09-04-2021 DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

Haripal, J.

Whether an Additional District Court has jurisdiction to entertain a petition touching the matters falling under the Arbitration and Conciliation Act; Can a party to an arbitration dispute challenge the jurisdiction of the Arbitrator for the first time before the court in a petition filed under Section 34 of the Act, are the two questions posed for consideration in this appeal.

2. This is an appeal preferred under Section 37 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as the Act, challenging the correctness of the order of the III Additional District Judge, Kozhikode in OP(Arbitration) No.270/2018. That was a petition filed by the appellant before the District Court, under Section 34 of the Act seeking to set aside the award of the Arbitrator, dated 29.09.2018.

3. It is the common case that the appellant and the respondent were partners in M/s.Shalimar Jewellery, a partnership concern dealing in the sale of gold. The partnership agreement was executed on

28.10.2013. Before the execution of that agreement, there were three partners in the firm, the appellant, the respondent and one V.K. Moidu. When Moidu chose to move out, the agreement dated 28.10.2013 was brought in existence. During the course of business the appellant and the respondent could not move on and thus, by a lawyer notice, the respondent notified the appellant his intention to dissolve the partnership. Thus he informed that the partnership stood dissolved with effect from 01.05.2015. In the matter of settlement of accounts the partners could not reach a consensus and that led to the appointment of two Arbitrators at the instance of the parties. The appellant nominated Sri.K. Aravindakshan as Arbitrator who dismissed the claim of the respondent. On the other hand, one Sri. Abdulla Manapurath was nominated by the respondent as Arbitrator who found that, at the time of dissolution of the partnership, 6481.580 grams of gold was the stock-in-trade, the value of which was estimated to be Rs.1,91,85,476.80/- and thus the respondent was found entitled half of the said amount, i.e. Rs.95,92,738.40/-. In the light of divergent finding of the respective Arbitrators, both the Arbitrators jointly nominated Adv. Sri. A.K. Rajeev as the third Arbitrator, who, after taking evidence, passed an

award to the effect that the respondent is entitled to claim Rs.1,13,77,405/- with interest at the rate of 11% on Rs.87,03,427/-. Aggrieved by the said award of the third umpire, the appellant moved the District Court with the above stated Original Petition under Section 34 of the Act. By the impugned order, on 02.03.2020, the learned III Additional District Judge dismissed the petition. Aggrieved by the same, the appellant has moved this Court under Section 37 of the Act.

4. We heard Adv.Sri. B.Krishnan for the appellant and Adv.Sri. Mohammed Nias for the respondent. The records leading to the award and the order passed by the learned Additional District Judge were also summoned and perused.

5. The point arising for consideration is whether the appellant could make out valid reasons for interference under Section 37 of the Act.

6. As mentioned earlier, it is the common case that both the appellant and the respondent were partners of a partnership firm by name M/s.Shalimar Jewellery doing business in gold at Nadapuram in Kozhikode district. The partnership agreement was executed on 28.10.2013 in continuation of the earlier business run by the parties

themselves along with one V.K. Moidu. Clause 17 of the partnership agreement reads thus:-

> "17. Any dispute or difference of opinion that may arise between the partners or their heirs or their legal representatives with regard to this partnership agreement or any other matter relating to this firm shall be mutually discussed and settled. If not settled, the dispute shall be referred to two arbitrators by common agreement of the partners. Where these arbitrators are themselves divided in opinion, the matters may further be referred to an umpire chosen by the said arbitrators."

It is on the strength of the above clause in the agreement that the appellant and the respondent had nominated their respective Arbitrators. But divergent awards were passed by the Arbitrators, which necessitated the appointment of a third umpire and that was how the impugned award had come into existence.

7. The impugned order indicates that even though the appellant had challenged the award with numerous contentions, at the time of argument he confined to one ground only namely, that the dispute is not capable of settlement by arbitration. The learned Additional District Judge considered this aspect and basing on the decision of the Hon'ble Supreme Court in **M/s. V.H. Patel & Company**

and others v. Hirubhai Himabhai Patel and others [(2000) 4 SCC 368] and also **A. Ayyasami v. Parasasivam and others [(2016) 10 SCC 386]** ruled against the appellant and held that a dispute on the dissolution of a partnership is capable of being adjudicated by the Arbitrator and ultimately the petition was dismissed.

8. Elaborate and lengthy arguments were addressed by the learned counsel for the appellant. According to him, such a contention of the respondent touching the dissolution of the partnership is not arbitrable, it is a matter to be deliberated upon by a civil court. According to the learned counsel, the Arbitrator went wrong in awarding a huge amount in favour of the respondent, it is in contrast to the terms of the partnership deed, where it is specified in clause 5 that the capital of the partnership was Rs.40 lakhs. It is the contribution of both the partners in equal proportion according to the requirement of the business. Ignoring this clause the Arbitrator went further, exceeding his authority and granted a huge amount as award, which cannot stand judicial scrutiny. In this circumstance, it is illegal that the Arbitrator had gone to assess the value of the gold etc. The learned counsel contended that when there is a statement in the agreement that the

capital value is Rs.40 lakhs, there was no necessity to go behind it. Besides the jurisdiction of the Arbitrator, the learned counsel contended that an Additional District Judge lacks authority to entertain a petition under Section 34 of the Act. According to him, the matter ought to have been considered by the Principal Civil Court of original jurisdiction of the District, which is the Principal District Court. On this aspect, he placed reliance on **Sree Gurudeva Charitable and Educational Trust and others v. K. Gopalakrishnan and others [2020 (5) KHC 343]**. Referring to Section 7 of the Civil Courts Act, the counsel contended that being a special enactment, Arbitratoin and Conciliation Act does not postulate investiture of the power on the Additional District Judge. According to the learned counsel, the third Arbitrator did not pass the award within time.

9. On the other hand, the learned counsel for the respondent submitted that the order under challenge indicates that the appellant had given up all grounds except the authority of the Arbitrator to take up the issue of dissolution of partnership and, therefore, that contention alone can be agitated before the appellate court. After demanding rendition of accounts, and claiming half share in the capital asset of the firm, and

also after taking initiative for appointing an Arbitrator and then appointment of the third umpire, now he cannot be heard to say that the dispute is not arbitrable or that the Arbitrator has no jurisdiction. The appellant was raising a plea of discharge but he did not prove the same. After giving up all other grounds taken in the petition filed under Section 34 of the Act, now he cannot agitate those matters before the appellate court. According to the learned counsel, the capital value mentioned in the partnership agreement is irrelevant. Evidently, on the date of stoppage of the business, 6481.580 grams of gold was the stock-in-trade. The appellant has no dispute on this nor has a case that the value of the stock was not ascertainable. Notwithstanding the agreement on the capital asset of the firm, the value of the assets of the firm on the date of dissolution is important and the Arbitrator has fixed the liabilities based on the stock-in-trade available with them on that date. Both the partners are entitled to get the value of such assets, on the basis of the provisions of the Partnership Act. It is only a matter of mathematical calculation. The decision reported in **Sree Gurudeva Charitable and Educational Trust**, quoted supra, has no application to the facts of the case. So the learned counsel strongly defended the

impugned order and sought for the dismissal of the appeal.

10. The sole ground highlighted before the District Court challenging the award is the want of jurisdiction of the Arbitrator to consider the question of dissolution of partnership. But, going by the records, the respondent, who initiated resolution of the disputes through arbitration took the stand that the partnership stood dissolved with effect from 01.05.2015 and what remained was production of the books of accounts of the firm for the purpose of winding up. According to him, by a registered communication, he intimated the appellant that the matter has to be referred for arbitration and also conveyed the appointment of Sri. Abdulla Manapurath as the Arbitrator. This notice was responded by the appellant by letter dated 10.11.2016, conveying his intention to appoint Sri. K. Aravindakshan, Tax Practitioner, as the Arbitrator to do arbitration proceedings along with said Sri. Abdulla Manapurath. In other words, both sides proceeded on the assumption that the partnership stood dissolved with effect from 01.05.2015. That being the position, in fact, the question of jurisdiction of the Arbitrator to consider the dissolution of partnership, in our assessment, did not arise at all. What remained was settlement of accounts between the

parting partners. Whatever it may be, the authority of an Arbitrator to consider the question of dissolution of partnership is no more *res integra*. As rightly noted by the learned Additional District Judge, the Hon'ble Apex Court in the decision reported in **V.H. Patel & Company,** quoted supra, has considered the question and held that such a matter also will fall within the domain of the Arbitrator. Paragraph 12 of the judgment reads thus:-

> "12. So far as the power of the arbitrator to dissolve the partnership is concerned, 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, the arbitrator has power to decide whether or not the partnership shall be dissolved and to award its dissolution. [See:Phoenix v. Pope & Ors., (1974) 1 All E.R. 512]. Power of the arbitrator will primarily depend upon the arbitration clause and the reference made by the court to it. If under the terms of the reference all disputes and difference arising between the parties have been referred to arbitration, the arbitrator will, in general, be able to deal with all matters, including dissolution. There is no principle of law or any provision which bars an arbitrator to examine such a question. Although the learned counsel for the petitioner relied upon a passage of Pollock & Mulla, quoted earlier, that passage is only confined to the inherent powers of the court as to whether dissolution of partnership is just and equitable, but we have demonstrated in the course of our order that it is permissible for the

> court to refer to arbitration a dispute in relation to dissolution as well on grounds such as destruction of mutual trust and confidence between the partners which is the foundation therefor."

11. As held by the Apex Court, the power of the Arbitrator to consider the arbitrability or otherwise is controlled by the terms of the agreement. If there is a clause for arbitration in the partnership deed, necessarily it will guide the proceedings. Here, as noticed earlier, clause 17 of the partnership agreement dated 28.10.2013 clearly envisages the appointment of an Arbitrator or Arbitrators, as the case may be, if any matter relating to the firm cannot be mutually discussed and settled. Taking strength from the said clause the respondent had initiated appointment of an Arbitrator, which was followed suit by the appellant. After both the Arbitrators had given divergent views, the third umpire was appointed as provided under the agreement. Before the third umpire also the parties appeared and presented their case; after having co-operated with the third umpire also with open eyes, without raising slightest objection regarding the jurisdiction of the Arbitrator, now the appellant cannot be heard to say that the Arbitrator lacked jurisdiction to resolve any matter in controversy. Appellant has no case

that he had raised a contention touching want of jurisdiction of the Arbitrator or that the Arbitrator did not consider it. The appellant has made such a plea for the first time before the District Court and then before this Court, without raising any contention before the Arbitrator. In fact, Section 16 of the Act enables a party to raise objection before the Arbitrator himself challenging his jurisdiction. But without resorting to such a course, the matter was raised before the District Court for the first time.

12. The preamble of the Act makes it amply clear that the Parliament enacted the statute almost on the same lines as the Model Law which was drafted by United Nations Commission on International Trade Law, UNCITRAL. Under the 1940 Act, an Arbitrator had no power to decide on his own jurisdiction. But Section 16 of the Act of 1996 is a recognition of the doctrine of *competence-competence* meaning that the Arbitral Tribunal can rule on its own jurisdiction. The crux of the arbitration process is the autonomy of the disputing parties with minimum judicial intervention. Once the Arbitral Tribunal, after hearing parties, gives a decision that the arbitration agreement exists between the parties, then by virtue of sub-section (5) of Section 16, the

tribunal is bound to proceed with the arbitration matter and make the award and the validity of the order can be assailed by the aggrieved party only by filing objections against the award under Section 34.

13. It is the requirement of the law that respondent must state his objections with regard to the jurisdiction of the Arbitrator before filing the statement of defence. However, the respondent may be allowed to raise objection to the jurisdiction of the Arbitrator even subsequent to the filing of the defence statement provided he can show good reasons to the Arbitrator for raising such an objection at a belated stage. In this connection, it is apposite to extract the following paragraphs from the decision reported in **Gas Authority of India Limited and another v. Keti Constructions (I) Ltd. and others [(2007) 5 SCC 38]**:-

> "24. The whole object and scheme of the Act is to secure an expeditious resolution of disputes. Therefore, where a party raises a plea that the Arbitral Tribunal has not been properly constituted or has no jurisdiction, it must do so at the threshold before the Arbitral Tribunal so that remedial measures may be immediately taken and time and expense involved in hearing of the matter before the Arbitral Tribunal which may ultimately be found to be either not properly constituted or lacking in jurisdiction, in

> proceedings for setting aside the award, may be avoided. The commentary on Model Law clearly illustrates the aforesaid legal position.
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> 25. Where a party has received notice and he does not raise a plea of lack of jurisdiction before the Arbitral Tribunal, he must make out a strong case why he did not do so if he chooses to move a petition for setting aside the award under Section 34(2)(a)(v) of the Act on the ground that the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties. If plea of jurisdiction is not taken before the Arbitrator as provided in Section 16 of the Act, such a plea cannot be permitted to be raised in proceedings under Section 34 of the Act for setting aside the award, unless good reasons are shown."

The above dictum is a complete answer to the argument raised by the appellant touching want of jurisdiction of the Arbitrator. At the risk of repetition, we may point out that the appellant has no dispute regarding the validity of the agreement, nor he had raised such a contention before the two Arbitrators chosen by the parties and also before the third umpire. In the circumstances, he is estopped from raising such a belated plea in a petition filed under Section 34 of the Act.

14. We have also come across the decision of a learned Single Judge of the Bombay High Court, reported in **Yogendra N. Thakkar v.**

Vinay Balse and another [2018 KHC 5034], where the learned Judge has ruled, basing on the decision of the Hon'ble Apex Court in **V.H.Patel & Company**, quoted supra, that the power of dissolution of the partnership firm under Section 44(g) of the Indian Partnership Act on just and equitable grounds also is an action in personam and not in rem. We concur with the above view expressed by the learned Single Judge of the Bombay High Court.

15. We have already referred to clause 17 of the agreement executed between the parties. It is quite patent that the said clause is very wide and the intention of the parties is to settle the dispute through arbitration, in the event it could be settled through mediation. Section 44 of the Partnership Act also does not impose any taboo or cause any restriction which prevents dissolution of partnership through arbitration. In other words, there is no inherent lack of jurisdiction in the matter of considering the question of dissolving the partnership through arbitration.

16. During the course of argument, the learned counsel for the appellant also disputed the jurisdiction of the Additional District Judge in entertaining a petition under Section 34 of the Act. Referring to

Section 2(e) of the Act, he said that 'court' means only principal civil court of original jurisdiction in a district and, therefore, the Additional District Judge has no jurisdiction to entertain the petition. In this connection, he placed strong reliance on **Sree Gurudeva Charitable and Educational Trust**, quoted supra. But we have no doubt in our mind that such an argument cannot be accepted in right earnest. Firstly, the decision in **Sree Gurudeva Charitable and Educational Trust**, was rendered in the context of Section 92 of the Civil Procedure Code and has turned up on its own facts. We are not called upon to make any opinion on the correctness of the said decision. Secondly, Section 2(1)(e) of the Act reads thus:

> "2. **Definitions.-** (1) In this Part, unless the context otherwise requires,-
>
> (e) "Court" means—(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
>
> (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having

> jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of Courts subordinate to that High Court."

17. A close reading of this provision will not impel us to adopt the argument raised by the learned counsel. The said provision enables the principal civil court of original jurisdiction in a district as the court having jurisdiction to decide the question forming the subject matter of arbitration; such a court does not include any civil court of a grade inferior to such a court or any Court of Small Causes. The latter limb of Section 2(1)(e) of the Act makes it abundantly clear that the definition of the 'court' does not include 'any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes'. To put it in other words, legislature has not thought of excluding courts exercising identical or co-equal powers from the definition. In no stretch of imagination an Additional District Judge can be inferior to such principal civil court. A court is inferior to another court, when an appeal lies from the former to the latter. An inferior court must be construed to mean judicially inferior and has appellate jurisdiction. A court is an inferior court for the purpose of the prohibition in the

provision whenever its jurisdiction is limited. The Additional District Judge enjoys an equal, concurrent jurisdiction with the District Judge. His powers are identical and co-equal with the Principal District Judge. Both are manned by officers in the category of District Judge. The Principal District Judge cannot revise an order passed by any Additional District Judge. District Court is the 'court' for the purposes of execution of the award and considering the matters under the Arbitration Act, it is important to note that the Principal District Judge has no appellate jurisdiction or revisional jurisdiction over the Additional District Judge. For all practical purposes, if there are more than one district court in a district, the Principal District Judge can only be considered first among equals and the Additional District Judge is in no way considered to be inferior to the Principal District Judge.

18. When a similar contention, that an Additional District Judge has no jurisdiction to entertain an application under Section 9 of the Act, was raised, in **Globsyn Technologies Ltd. v. Eskaaycee Infosys [2004 (2) ALT 174 : MANU/AP/0970/2003]** the High Court of Andhra Pradesh ruled thus:-

> “12. The short question that falls for consideration is as to

> whether the Court of the learned VI-Additional District Judge is a Civil Court of a grade inferior to the Principal Civil Court. The Court of the Principal District Judge and the Court of VI-Additional District Judge are of equal grade. The Court of the learned VI-Additional District Judge is not a court of a grade inferior to the Court of the Principal District Judge. The expression "Court of a grade inferior" is required to be understood in its proper context.
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> 13. The dictionary meaning of inferior is "lower in any respect, subordinate, a person who is lower in rank or station". According to Black's Law Dictionary, inferior means "one who, in relation to another, has less power and is below him; one who is bound to obey another. The term may denote any Court subordinate to the chief appellate Tribunal in the particular judicial system [eg. Trial Court]; but it is also commonly used as the designation of a Court special, limited or statutory jurisdiction".
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> 14. I find it difficult to accept the submission of the learned Additional Advocate General that the Court of the learned VI-Additional District Judge at Visakhapatnam is a Court of a grade inferior to the Principal District Judge's Court. …....."

19. A Division Bench of the Madhya Pradesh High Court also considered the same question pointedly in **Madhya Pradesh State Electricity Board and another v. ANSALDO Energia, S.P.A. and another [AIR 2008 M.P. 328]**. After making an elaborate survey of

authorities taken by various High Courts on the point, approving the dictum in **Globsyn**, mentioned supra, it was held that, the Additional District Judge has jurisdiction to entertain a petition filed under Section 34 of the Act. We are in respectful agreement with the above finding.

20. In the context of the Kerala Civil Courts Act also such an argument of the learned counsel cannot hold good. Section 2 of the Civil Courts Act provides three category of positions namely, the court of a District Judge, the court of a Subordinate Judge and the court of a Munsiff. Section 3 provides for establishment of district court. Going by sub-section (2) of Section 3 of the Civil Courts Act, the Government shall establish a district court for each district and a Judge shall be appointed to such court. Section 4 provides for appointment of Additional District Judges. Under sub-section (1) of Section 4 when the state of business pending before a district court so requires, one or more Additional District Judges may be appointed to that court for such period as it deemed necessary. Sub-section (2) of Section 4 says that an Additional District Judge shall discharge all or any of the functions of the District Judge under this Act in respect of all matters which the District Judge may assign to him, or which under the provision of

Section 7 may be instituted before him and in the discharge of those functions he shall exercise the same powers as the District Judge. When such additional district courts are established and Additional District Judges are appointed, sub-section (2) of Section 4 of the Civil Courts Act empowers the Additional District Judges so appointed with powers to discharge all the functions of the District Judges. It is very specific when it is provided that the Additional District Judge shall exercise the same powers as the District Judge. That is why it is stated that Principal District Judge is only first among equals among the District Judges in a district. In the circumstance, there is no jurisdic19tional error in Additional District Judges hearing petitions filed under the Act.

21. Arguments were also addressed stating that the award was given in total disregard of the time frame provided under Section 29-A of the Act. According to the learned counsel, the award is hit by sub-clause (4) of Section 29A of the Act. We are unable to subscribe this argument also. It is evident from the paper book produced by the learned counsel and also the records that, when two Arbitrators appointed by the parties had given divergent views, appointment of a

third umpire became necessary. Accordingly, both the Arbitrators together, by letter dated 15.05.2017, nominated Sri.A.K. Rajeev, Advocate, Vadakara as the third umpire. The proceeding paper indicates that he had taken up the matter on 19.05.2017 and the impugned award was passed on 29.09.2018. No doubt such an award was not passed within a period of twelve months as provided under Section 29-A(1) of the Act. All the same, sub-clause (3) of Section 29-A provides that the parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months. Referring to paragraph 8 of the impugned award, the learned counsel for the respondent submitted that the third umpire proceeded with the matter, as consented by the parties, under sub-section (3) of Section 29-A. Relevant portion of the award indicates that, 'there was some delay in proceeding with the matter partly attributable to his personal inconvenience and also due to the delay and laches on the part of the parties in submitting their statements and documents before him'. The claimant filed his statement along with the documents only on 02.04.2018 whereas the respondent filed his statement on 09.05.2018. It is further stated that on 09.05.2018, that is

before the expiry of twelve months starting from 15.05.2017, both the parties were requested by him to extend their cooperation to complete the proceedings and make the award as early as possible and at any rate on or before 15.10.2018. According to him, they accepted and agreed for the same and cooperated with him for completing the arbitration proceedings. In other words, taking the date of commencement of the proceedings as 15.05.2017, before the expiry of twelve months both the parties consented to extend the period specified in sub-section (1) of Section 29-A for making the award and the award was passed on 29.09.2018 within a further period of six months from the date of giving the consent. Sitting in this jurisdiction, we do not find any reason to disbelieve the version of the Arbitrator and to strike off the proceedings under sub-section (4) of Section 29-A of the Act.

22. This is not a regular appeal as provided under Order XLI CPC or Section 5 of the High Court Act, but an appeal under Section 37 of the Act. While considering an application under Section 34 of the Act, the District Court has only supervisory jurisdiction. The jurisdiction of this Court under Section 37, at the tapering end of the proceedings, is still narrow and thin.

23. It is the settled proposition of law that an Arbitrator is a Judge chosen by the parties and his decision is final. The court is not expected to appraise evidence as done by a regular court of appeal. In a case where the award contains reasons, interference would not be available within the jurisdiction of the court unless reasons are totally perverse or the award is based on wrong proposition of law. An error apparent on the face of the records would not imply closer scrutiny of the merits of documents and materials on record. Once it is found that the view of the Arbitrator is a plausible one, the court will refrain from interfering in the matter.

24. In the decision reported in **P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. (2012 (1) SCC 594** the Apex Court held that a court under Section 34(2) of the Act does not sit in appeal over the award of an Arbitral Tribunal by re-assessing or re-appreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. In the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether any different decision can be arrived at. Similarly, in **Sutlej Construction Ltd. v. Union Territory of**

Chandigarh [(2018) 1 SCC 718], while commenting against an order passed under Section 34 of the Act, the Hon'ble Supreme Court held that the Judge ought to have restrained himself from getting into the meanderings of evidence appreciation and acting like a second appellate court.

25. Coming down to the jurisdiction under Section 37, it is clear that the court cannot travel beyond the restrictions laid down under Section 34 of the Act. The Hon'ble Supreme Court has held that the Court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power under Section 34 has not exceeded the scope of the provisions; in case an arbitral award has been confirmed by the court under Section 34, in an appeal under Section 37 the appellate court must be extremely cautious and slow in disturbing such concurrent findings.

26. We have considered the contentions of the parties bearing in mind the restrictions imposed by the statute and also the caution sounded by the Apex Court. On an overall consideration of the entire circumstances, we are sure that the learned Additional District Judge has considered the award in proper perspective and reached a correct

conclusion. We are of the definite view that overwhelming reasons are not made out warranting interference in appeal. Point is answered accordingly and the appeal is dismissed. No costs.

Before parting with, we once again record our deep appreciation for the erudite and enlightening arguments raised before this Court by the learned counsel for the appellant as also the learned counsel for the respondent.

Sd/-
C.T.RAVIKUMAR
JUDGE

Sd/-
K.HARIPAL
JUDGE

okb/22.03.2021

//True copy// P.S. to Judge