

(2009) 07 DEL CK 0087**Delhi High Court****Case No:** I.A. No. 5704 of 1999 and OMP No. 167 of 1999

K.C. Mehra

APPELLANT

Vs

Satish Mehra and Others

RESPONDENT

Date of Decision: July 1, 2009**Acts Referred:**

- Arbitration and Conciliation Act, 1996 - Section 12, 34, 34(3)
- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3, Order 23 Rule 3A, 11

Citation: (2009) 161 DLT 361 : (2010) 8 RCR(Civil) 2017**Hon'ble Judges:** Vipin Sanghi, J**Bench:** Single Bench**Advocate:** Rakesh Tiku, for the Appellant; Nemo, for the Respondent**Judgement**

Vipin Sanghi, J.

The petitioner has filed the present petition u/s 34 of the Arbitration and Conciliation Act 1996 (The Act) to challenge the award dated 24.12.1998 made by the sole arbitrator respondent No. 1 Sh. Satish Mehra. The petitioner Sh. K.C. Mehra, respondent No. 1-Sh. Satish Mehra, respondent No. 2 Sh. P.N. Mehra and respondent No. 7 Sh. P.R. Malhotra are sons of Late Sh. Dinanath Mehra. Respondent No. 3 is the wife of Sh. P.N. Mehra, respondent No. 2. Respondent Nos. 4, 5 and 6 namely Sh. Pawan Mehra, Sh. Sanjay Mehra and Sh. Sandeep Mehra are the sons of Late Sh. A.N. Mehra, who was the son of Sh. Dinanath Mehra. The petitioner states that Late Sh. Dinanath Mehra who had seven sons partitioned the property which he possessed among his family members by a duly registered partition deed dated 26.08.1955 registered before the Sub-Registrar, Delhi on 09.01.1957. Late Sh. Dinanath Mehra expired in the year 1961. In 1981, Sh. R.N. Mehra, i.e. respondent No. 2, filed a Suit for partition before this Court being Suit No. 282/1981. The other six brothers were arrayed as defendants. He sought partition of the movable and immovable properties belonging to the parties and claimed 1/7th share in such properties. On 09.03.1987 the parties to the suit entered

into a compromise and moved an application under Order 23 Rule 3 CPC being I.A. No. 1522/1987. The court recorded the statements of the parties and the suit was disposed off in terms of the compromise. The petitioner states that attempts made by two brothers namely Sh. Suresh Mehra and Late Sh. A.N. Mehra to challenge the compromise decree by filing I.A. Nos. 1741-42/1987 (by Suresh Mehra) and suit No. 1143/1985 (by Late Sh. A.N. Mehra) were not pursued and were dismissed for non prosecution on 01.09.1998 and 23.03.1999 respectively.

2. The petitioner states that he was shocked to receive a communication from one Sh. Vinod Kumar, Advocate, c/o Kumar and Company, Advocates, stating that respondent No. 1 had been appointed as an Arbitrator by consent of some of the brothers, including the petitioner and that respondent No. 1 had made an award on 24.12.1998, a copy of which was enclosed with the said communication. It was also informed that Sh. Satish Mehra, respondent No. 1 had got the award registered before the Sub-Registrar Paharganj, New Delhi. The petitioner states that he had never entered into any arbitration agreement with anyone appointing respondent No. 1 as an Arbitrator. There was no occasion to appoint an Arbitrator as all disputes had been fully and finally settled between the brothers vide compromise dated 09.03.1987 in Suit No. 282/1981. The petitioner alleged forgery by respondent No. 1 by misusing a blank signed paper of the brothers including the petitioner. The petitioner states that the suit earlier filed by Sh. P.N. Mehra for partition was only in respect of a few properties namely:

- A. Property No. 4/33, W.E.A, Karol Bagh, New Delhi.
- B. Agricultural land in Moja Tihar (now Hari Nagar).
- C. Property No. 16/B-6, Deshbandhu Gupta Road, New Delhi.
- D. Shed No. F-9, DSIDC, Nangloi 4, New Delhi.
- E. Jewellery.
- F. Rendition of Accounts.

3. He submits that in the compromise application the parties had clearly agreed and stated that with regard to the other properties held by the respective brothers, there was no dispute. In the compromise application the parties had specifically stated:

The other properties claimed in the plaint, for partition and not included in the compromise, shall be deemed that the plaintiff or the defendants have no dispute over those properties.

4. He further submits that the factum of the brothers having signed blank papers earlier had been recorded in the compromise application and it had then been agreed that neither party would use such blank signed papers. The petitioner refers to para 2 of the compromise application namely I.A. No. 1522/1987 which reads as

under:

It is apprehended that there are certain blank papers or stamp papers signed by the defendants and the plaintiffs in possession of Shri Amar Nath Mehra and now his heirs. There may be similar papers with the other parties. All these papers shall be deemed to be void and nobody will have any right to use those papers etc. nor they will claim any right against the others by using these papers.

5. The first submission of the petitioner to challenge the award, therefore, is that there was no arbitration agreement entered into between the parties thereby appointing by respondent No. 1 as the sole Arbitrator and that the said agreement was a forged and fabricated documents. The specific averment made by the petitioner in this respect is found in para 18 of the petition and the same reads as follows:

That the petitioner was shocked to not only receive the letter but perused the alleged award dated 24.12.98 as he never agreed to any arbitration or appoint the respondent No. 1 as Arbitrator and there was no question of the same once the matter and/or disputes, if any raised were settled amongst all brothers fully and finally vide compromise dated 9th March, 1987 in suit No. 282/81. It was apparent that the respondent No. 1 had indulged in forgery, misusing some blank documents on which signatures were got by all the brothers which as per the compromise dated 9th March, 1987 were deemed to be void for all intents and purposes.

6. The next submission of learned Counsel for the petitioner is that the disputes between all the three brothers had been amicably settled on 09.03.1987 in suit No. 282/1981. There was no outstanding dispute remaining which could have been referred to arbitration. For this he relies on the terms of the compromise application which in detail sets out the manner of division of various properties mentioned in para 1 of the said application. The application also records that several suits pending inter se between the parties would stand withdrawn upon the parties entering into the compromise. Para 7 of the application specifically records "there was now no dispute whatsoever left between the parties" and para 8 records "the parties shall include their heirs and successors and all shall be bound by this compromise". As aforesaid para 5 of the application states "the other properties claimed in the plaint for partition and not included in the compromise, shall be deemed that the plaintiff or the defendant have no dispute over those properties".

7. The next submission of learned Counsel for the petitioner is that a perusal of the award shows that respondent No. 1, the so-called sole arbitrator, in any event, could not have acted as an arbitrator since he had a personal stake in the so-called dispute. The award shows that the sole arbitrator threw his hat into the ring by himself becoming one of the claimants, claiming a share in practically all the properties and businesses, and he made the award in his own favour. The respondent No. 1 was, therefore, disqualified from acting as an Arbitrator as he had

an inherent bias. He was himself not even a party to the so-called arbitration agreement. He had not even raised any claim or dispute with regard to the compromise decree passed in Suit No. 282/1981. However, respondent No. 1 seized the opportunity while acting as an arbitrator under a forged and fabricated arbitration agreement to claim a share in various properties and businesses, disputes in respect whereof stood completely and finally settled under the compromise decree, and proceeded to make a self serving award in his favour.

8. The further objection of the petitioner is that the so-called Arbitrator namely respondent No. 1 did not conduct any arbitration proceedings. There were no statements of claim or counter claim or any other document or record filed before the arbitrator, and no record of any proceedings which are claimed to have been held was ever maintained. In fact, there is no arbitration record to back up the impugned award. There is only a forged arbitration agreement followed by the impugned award. The petitioner states that no arbitration proceedings of any kind were held.

9. The next submission of learned Counsel for the petitioner is that the impugned award made by the sole arbitrator is beyond the terms of reference. Assets and properties, which did not form subject matter of the reference, and rights of persons, who were not even parties to the so called arbitration agreement have been dealt with in the impugned award. In this respect, the petitioner highlights the award made in respect of property bearing Nos. 16-B/6, Desh Bandhu Gupta Road, Dev Nagar, New Delhi and C-48, Sector-6, Noida. The submission made in respect of these properties would be dealt with a little later.

10. It is lastly argued that the impugned award does not disclose any reasons. The arbitrator has not supported his findings and conclusions with reasons, and he merely declares the share of the various persons (including those not party to the reference) in respect of various properties (including those not part of the reference) without indicating why and how he has arrived at his findings and conclusions.

11. The arbitration agreement on the strength of which the impugned award had been made by the respondent No. 1 has been placed on record by respondent No. 1 Sh. Satish Mehra, the Arbitrator. This arbitration agreement reads as follows:

We the undersigned agree and declare that we have appointed Satish Mehra to resolve and decide the disputes between us regarding the various properties and assets of Mehra Associate, Gemini Apparel and Hartmann Pharmaceuticals. The decision taken by him will be binding upon us and we understand that we shall not, directly or indirectly dispute the decision taken by him in any court of law. Regarding Suresh Mehra, if he does not agree to the decision, Satish Mehra and Pawan Mehra will be authorized to contest the matter on our behalf with him.

Sd/- P.N. Mehra

Sd/- Asha Mehra

Sd/- Pawan Mehra

Sd/- for Sanjay

Sd/- K.C. Mehra

Sd/- P.R. Malhotra

Witnesses:

1. Prateek Mehra sd/- 16/02/98

2. Mrs. Uma Malhotra sd/- 16/02/98

12. From the said agreement, it appears that apart from the petitioner Sh. K.C. Mehra, the other parties to this agreement were Sh. P.N. Mehra, respondent No. 2, Mrs. Asha Mehra, respondent No. 3, Sh. P.R. Malhotra, respondent No. 7, Sh. Pawan Mehra, Sh. Sanjay Mehra and Sh. Sandeep Mehra, respondent Nos. 4 to 6. Respondent No. 1 was not a party to the agreement but was purportedly appointed as the sole arbitrator, is the one who has mainly defended the challenge raised by the petitioner by filing the present petition. The other respondents viz. respondent Nos. 2 & 7 have filed their joint response limiting the same to only two issues. They have affirmed the validity of the arbitration agreement and given their version of the scope of the arbitration agreement vis-à-vis the compromise decree. However, at the time of hearing none appeared for any of the respondents to make their submissions.

13. Respondent No. 1 denies that the arbitration agreement is a forged and fabricated document and that no arbitration proceedings took place. Respondent No. 1 makes his submissions in respect of various properties held by one or more of the brothers or their father late Sh. Dinanath Mehra. So far as the compromise decree in suit No. 282/1981 is concerned, the stand of respondent No. 1 is that the said compromise application was signed by the petitioner as the attorney of respondent No. 1 herein Sh. Satish Mehra. Respondent No. 1 seeks to question the action of the petitioner in acting as his attorney in Suit No. 282/1981. He states that the said compromise was not acceptable to him and the same was without his consent. Respondent No. 1 states that in the year 1988, he came from USA (where he resides) and prevailed upon the parties to settle the disputes out of court. He states that the parties entered into an agreement to refer the disputes to his sole arbitration despite the fact that he himself was also a claimant to the properties standing in the name of other parties and the other parties were claiming rights in properties standing in the name of respondent No. 1.

14. Pertinently, respondent No. 1, in para "I" under the heading "Brief facts" of his counter affidavit states "petitioner's submission that property which is not part of the arbitration agreement have been included in the award is correct". The explanation furnished is that the parties had initially drawn up a preliminary list of properties on which question marks were put against a couple of properties, and that after discussion the final list was drawn in which "these properties were not included but taking into account that funds for their purchase also came from

partners funds, these were mentioned in the award but deponent did not make any determination regarding them". Respondent No. 1 disputes the averment of the petitioner that the petitioner had to recover huge amounts of money from respondent No. 1 and goes on to state that respondent No. 1 has to recover huge amounts from the petitioner. He states that parties had been called upon to file their respective statements of claim but the parties chose not to file any claim statements. However some documents in writing in support of their claims were given to respondent No. 1 which are annexed as annexure R-4 to the counter affidavit of respondent No. 1. He further states that minutes of meeting held on 20.12.1998 were recorded and the same is filed as annexure R-5. He further states that during the period 16.02.1998 till the passing of the award, nobody raised any objections and the award is the outcome of deliberations which respondent No. 1 has held with the parties to the petition both jointly as well as separately with other respondents.

15. Respondent No. 1 also states that present objection petition is barred by limitation, inasmuch as, the award is dated 24.12.1998 whereas the objections have been preferred by the petitioner only on 20.05.1999. The same could have been preferred within three months and delay could be condoned on justifiable grounds being shown to the court up to a maximum period of thirty days.

16. Respondent Nos. 2 to 7 have filed a joint reply. In their short reply they have restricted their submissions primarily to the aspect of the arbitration agreement being genuine and with regard to its scope in relation to the compromise decree. They state that on 16.02.1998 the parties had decided to appoint respondent No. 1 as the sole arbitrator. They deny the allegation of the petitioner that the agreement is forged or fabricated on pre-existing blank signed papers. They state that on 16.12.1998 everyone including the respondents and the petitioner, and respondent No. 1 Sh. Satish Mehra placed all the properties into the pool irrespective of the fact as to who owned them on paper or how they were obtained i.e. whether by purchase, under the compromise decree or inheritance. The properties standing in the name of two remaining brothers Sh. J.N. Mehra and Sh. Suresh Mehra were not included in the agreement, namely, shares in Khasra No. 2066/78 awarded to them as per the compromise decree of 1987. They also state that the petitioner had challenged the inclusion of some of the properties in the award. He had initially objected to such inclusion at the time of signing of the agreement but had subsequently agreed to their inclusion. They further state that the petitioner not only attended the meetings, except one, but even held individual meetings with some of the respondents.

17. Along with objection petition, the petitioner had also moved I.A. No. 5704/1999 u/s 34(3) of the Act to seek condonation of eleven days? delay in filing of the objections. The petitioner states in the said application that he was shocked to receive a communication from one Sh. Vinod Kumar, Advocate, c/o Kumar and

Company, Advocates, informing him that some alleged award has been made by Sh. Satish Mehra, his brother of which he had no knowledge. He further states that he started making enquiries to find out how the forgery has been committed. While he was making enquiries, he was suddenly taken ill with unstable Angina, Hypertension etc. and was advised rest for one month. He could not move out of his house. He was able to move out of his house only on 15.05.1995. He collected his old files and consulted his counsel. Thereafter, the objections were drafted and filed. He states that the communication from Sh. Vinod Kumar was received on 10.02.1999 through courier at 12.30 pm. The knowledge of the petitioner of the making of the award is, therefore, claimed from 10.02.1999. He states that the objection could, therefore, have been filed by 09.05.1999. Since the same have been filed on 20.05.1999, there is a delay of eleven days of which condonation is sought. The application is supported by the affidavit of the petitioner.

18. Despite notice, no reply has been filed to this application by any of the respondents. The petitioner has placed on record the communication stated to have been received from Sh. Vinod Kumar, Advocate which is dated 07.01.1999. However, there is no denial of the fact that the petitioner was served with the communication of Sh. Vinod Kumar through courier on 10.02.1999. Consequently, I see no reason to disbelieve the case of the petitioner that the petitioner was served with the award and became aware of the same only on 10.02.1999. The objections could have been preferred by the petitioner within three months from the date he received the arbitral award. That period expired on 09.05.1999. However, the Court has power to condone delay for a period of upto 30 days, but not thereafter. Since, the delay is only about eleven days, looking to the averments made in the application duly supported by affidavit of the petitioner, and the fact that there is no challenge to the same, I am inclined to condone the delay and accordingly I allow the application.

19. Having heard learned Counsel for the petitioner, perused the impugned award, the arbitration agreement, the proceedings placed on record by respondent No. 1 as well as having perused the counter affidavit of respondent No. 1 and the joint reply of respondent Nos. 2 to 7, I am of the view that the impugned award cannot be sustained and is liable to be set aside for multiple reasons.

20. Firstly, I may deal with the submission of the petitioner with regard to the arbitration agreement being forged and fabricated by the use of blank signed documents by respondent No. 1. The averment of the petitioner is that the arbitration agreement was forged and fabricated by respondent No. 1 by using earlier blank signed papers. Pertinently, no allegation of forgery or fabrication has been made against any of the other respondents. Respondent No. 1 and respondent Nos. 2 to 7 have separately and squarely denied any forgery as alleged by the petitioner. The petitioner, with a view to cast a doubt on the arbitration agreement seeks to place reliance on para 2 of the compromise application filed in suit No. 282/1981 wherein it was recorded that there are certain blank papers or stamp

papers signed by the defendants and plaintiffs in possession of Sh. A.N. Mehra and now his heirs, and that there may be similar papers with the other parties and such papers shall be deemed to be void and nobody will have the right to use the same.

21. A perusal of the arbitration agreement filed by respondent No. 1 as annexure R-1 however, shows that the same has been signed not only by the petitioner but by the other parties in the present petition and the same has also been witnessed by Prateek Mehra and Uma Malhotra. The placement of the signatures of all the parties on Annexure R-1 does not support the case of the petitioner that the said arbitration agreement has been forged on blank signed papers. If the same had been forged, the forgery would have been committed by not only respondent No. 1 but also by the other parties and witnesses. However that is not even the allegation of the petitioner. Even the statement made in the compromise application is with regard to the existence of some blank signed papers containing signatures of parties to the said suit. However, the arbitration agreement contains signatures of not only the petitioner and some of the parties to the said suit, but also of those who were not parties to the said suit. Consequently, I am not inclined to accept submission of the petitioner that the arbitration agreement is a forged and fabricated document. The same appears to be a genuine document.

22. I also cannot accept the submission that there could have been no reference to arbitration in respect of the subject matter of the agreement. Whatever may have been the effect of the compromise decree passed in Suit No. 282/1981, the fact of the matter is that the petitioner agreed to refer the disputes relating to three firms viz. Mehra Associates, Gemini Apparel and Hartmann Pharmaceuticals to arbitration. It does not lie in his mouth to now say that there was no subsisting dispute in relation to the assets and properties of three firms which could be referred to arbitration. I, therefore, reject this submission of the petitioner.

23. A perusal of the arbitration agreement shows that the parties to the said agreement had agreed to refer their inter se disputes regarding the properties and assets of Mehra Associates, Gemini Exports, Hartmann Pharmaceuticals to the sole arbitration of Sh. Satish Mehra, respondent No. 1. However, admittedly, the award has been made not only in respect of the assets and properties of Mehra Associates, Gemini Exports and Hartmann Pharmaceuticals but also in respect of the following properties:

1. 4/33 WEA.
2. 16-B/6 Deshbandhu Gupta Road
3. F-9, DSIDC, Industrial Block No. 4, Nangloi.
4. Khasra No. 2066/78, Village Tihar.
5. Khasra No. 2091, Hari Nagar, Village Tihar.

6. C-48 Sector - 6, Noida.

7. A-26, Sector 5, Noida.

8. A-27, Sector 5, Noida.

9. Assets of Kingsmen Pharmaceuticals, Delhi.

24. Respondent No. 1, as extracted above, admits the inclusion of various other properties in the award which did not form part of the initial reference. He further states that a final list of properties was drawn up (of the properties subject matter of arbitration) which too did not include the other properties. Pertinently, this so called final list is not a part of the arbitral record. In any event, admittedly that list did not include other properties. Though respondent No. 1 claims that he did not make a determination in respect of three other properties, the fact of the matter is that he has made a determination in respect of the properties enlisted above in the impugned award.

25. Though respondent Nos. 2 to 7 in their reply state that the petitioner after initial objections consented to other properties not forming part of the reference being included in the arbitration proceedings, there is nothing to show on record that the parties had agreed to enlarge the scope of the reference before the sole arbitrator. Arbitration agreement necessarily has to be in writing. It may be contained in a document signed by the parties, in an exchange of letters, telex, telegrams or other means of telecommunication which provide record of the agreement, or any exchange of statements of claims and defence in which the existence of the agreement is alleged by one party, and not denied by the other. The modification, enlargement or curtailment of the arbitration agreement, therefore, necessarily has to be in writing. In the present case, though initial arbitration agreement is in writing, the purported enlargement of its scope and reference of disputes with regard to various other properties to arbitration, admittedly, is not in writing. It cannot, therefore, be accepted that the scope of arbitration agreement was enlarged mutually by the parties. A perusal of the award shows that the arbitrator on the very first page incorrectly records that the agreement dated 16.02.1998 was entered into to resolve the differences/disputes "regarding various properties and assets of various companies which are either in their individual names or in the joint names of some of the parties...." Thereafter, the sole arbitrator goes on to deal with, *inter alia*, the aforesaid properties which were not even a part of the reference before the sole arbitrator. Since the award, admittedly, deals with the aforesaid properties apart from the properties and assets of the three firms namely Mehra Associates, Hartmann Pharmaceuticals and Gemini Exports and the award is beyond the terms of reference and cannot be sustained. The arbitrator acted beyond his jurisdiction while making the award dealing with the aforesaid properties.

26. There is also merit in the submission of the petitioner that respondent No. 1 was disqualified from acting as an arbitrator as he had personal interest and stake in the

dispute. A perusal of the arbitration agreement shows that respondent No. 1, the sole arbitrator was not a party to the same. It cannot, therefore be said that he had raised a dispute or claim in respect of three firms, the assets and properties whereof were sought to be divided between the petitioner and respondent Nos. 2 to 7 through his arbitration. How then, respondent No. 1 could have jumped into fray and staked a claim for himself in the various properties and made an award in his own favour is not understood. The sole arbitrator observes that the "compromise decree had been obtained by the parties excluding Mr. Satish Mehra and without his consent, which was subsequently challenged by Sh. Suresh Mehra". Therefore, respondent No. 1 sought to undermine the compromise recorded before the court in Suit No. 282/1981 by bringing in his own grievance that the compromise in the suit had been arrived at without his consent. If respondent No. 1 was aggrieved by the compromise decree which was made on the basis that he had also consented to the same, it was open for respondent No. 1 to have challenged the compromise decree in accordance with law. The filing of a separate suit to challenge a compromise decree is expressly barred by Order 23 Rule 3A. If a suit is not maintainable for that purpose, certainly arbitration could not have been resorted to, to set aside a compromise decree. Having not done so, it was not permissible for respondent No. 1 to exploit his position as an arbitrator while adjudicating disputes between a few of his brothers/their successors in respect of only a few specific properties, to settle his own scores with one or the other party. Respondent No. 1 further records "This appointment as an Arbitrator is made by the parties knowing fully well that I am also one of the claimants of the properties regarding which the disputes were in the family. It is also relevant that most of the properties which are subject matter of the present dispute were not in any case included in the previous compromise decree. Further more it was agreed that previous inter se agreements stand null and void."

27. If the position was as stated by the arbitrator in his award, how is it that respondent No. 1 did not become party to the arbitration agreement and did not sign the same, is not explained. The statement that most of the properties, the subject matter of the "present dispute" were not included in the previous compromise decree and that it had been agreed that previous inter se agreements stand null and void is wholly substantiated and finds no basis whatsoever in the arbitration record produced by respondent No. 1. Since the sole arbitration has proceeded on the foundation of the aforesaid premise, the impugned award cannot be sustained for this reason as well.

28. In the award the sole arbitrator, respondent No. 1, observes that the parties had themselves agreed not to file any claims in writing, but that they have shown to him the relevant records in their possession in support of their respective claims and counter claims. However, from the record of the arbitrator it appears that no notice was issued to the parties requiring them to present their claims/ counter claims, no time lines were fixed, and no opportunity was granted. Even the so called

agreement between the parties is not reflected in any order sheet, and no consent in writing in this respect was taken from the parties. What documents were shown to the arbitrator by the parties and considered by him is also not evident from the record filed by the arbitrator. Since these documents do not form part of the arbitral record, it is impossible to appreciate as to what is the purport or effect of the so-called documents shown to the arbitrator. Respondent No. 1 has filed along with his counter affidavit as Annexure R-4 what he claims to be some documents and writings in support of their claims given by the parties to him. A perusal of these documents shows that they all appear to have been written in the handwriting of one person. They are mere short notes prepared in respect of various properties and subject matter of the award. They do not bear the name or signature of the party, who has purportedly filed them before the arbitrator. Such a record is wholly unintelligible and serves no purpose. The lack of reasons in the award further compounds the confusion.

29. It also appears that no party was given the opportunity to meet the case of the others. The petitioner has stated that he never received any notice of any arbitration proceedings. From the record filed by the arbitrator it appears that this position is beyond any controversy. The arbitrator has filed on record, along with his counter affidavit, the proceeding sheet of only one date i.e. of 20.12.1998 as Annexure R-5. These proceedings record as follows:

A meeting was held on 20.12.98 at 2 Hare Krishna Temple, East of Kailash, New Delhi which was attended by Mr. P.N. Mehra, Mrs. Asha Mehra, Mr. P.R. Malhotra and Mrs. Uma Malhotra wife of Mr. P.R. Malhotra but he did not attend the meeting even though he confirmed that he shall attend. Mr. Pawan Mehra was also informed of the meeting by Mrs. Asha Mehra but he also could not attend the meeting.

30. It is clear that the petitioner was not issued any notice by the arbitrator and even if these proceedings are believed to be genuine they show the adoption of a very casual approach by the arbitrator. No other proceeding of any kind claimed to have been held by the arbitrator has been filed on record. The procedure adopted by the respondent-arbitrator appears to be in clear violation of the principles of natural justice.

31. The arbitrator in paragraph 6 on internal page 6 of the award observes that the major points of difference between the parties are in respect of, *inter alia*, the rights and obligations of K.C. Mehra and A.N. Mehra jointly and separately with respect to various properties bought in Noida in the names of Hartmann's Pharmaceuticals, Kingsmen Pharmaceuticals and Mehra Associates etc. "of which Mr. Satish Mehra was a partner with them but his name was removed arbitrarily by them from those properties which were subsequently transferred in their individual or joint names". The arbitrator, therefore, takes the opportunity while making his award to declare his removal from the aforesaid partnership firms, as arbitrary. This he does even though he is not a party to the arbitration agreement and he has not raised any

claim in the arbitration. The aforesaid finding of the arbitrator is a self- serving statement made by him. This clearly brings out the bias of the arbitrator. The arbitrator continues to make various self-serving statements in paragraph 7 of the award, which begins with the words "Some important facts placed before me and important for consideration of the matter are as follows: He goes on to state that the firm Mehra Associates was started in 1971 by Satish Mehra, the arbitrator and Amar Nath Mehra. He further states that the legal heirs of Sh. A.N. Mehra have obtained the sale proceeds equivalent to 4/7th of 4/33 W.E.A. whereas they admit that they are entitled to 1/7 share only while Sh. Satish Mehra (the arbitrator) and Sh. K.C. Mehra did not get any share. He further states that a plot of land in Noida, inter alia, jointly belonging to Satish Mehra was sold by Sh. A.N. Mehra in his lifetime but his legal heirs have no knowledge about the sale proceeds. In paragraph 8 of the award the arbitrator states as follows:

8. Since I am also a party to the dispute, in one of the meetings at the residence of Mr. K.C. Mehra, I removed myself from the meeting to allow the remaining parties to arrive at an amicable solution. A blue print of the division of the various properties among the parties to the dispute were presented to me for approval.

32. However, from the award and the proceedings filed before me there is nothing to suggest as to when this meeting took place at the residence of K.C. Mehra; what was the blue print of division of various properties amongst the parties to the dispute presented before the arbitrator; whether the same was in writing and signed by the parties, and; whether the arbitrator then proceeds to apportion the shares in the various properties dealt with by him in accordance with the so called blue print. In respect of the following properties, the arbitrator declares his own interest:

- i. 1/7 share in 4/33 W.E.A. which is due to him from the legal heirs of Mr. A.N. Mehra.
- ii. 2/7 share in Khasra No. 2066/78 village Tihar
- iii. 5/21 share in Khasra No. 2091 Hari Nagar
- iv. 1/4 share in 16B/6 D.B. Gupta Road
- v. 1/3 share in C/48 Sector 6 Noida

33. Under the heading "Adjustments", in para 11 of the award the arbitrator declares himself to be the owner of C-48, Sector-6, Noida, to the extent of 1/3. He also declares himself to be the owner of 16B/6, Deshbandhu Gupta Road, property to the extent of 5/16 share. He declares his share in property No. 2066/78 Hari Nagar to the extent of 3/7 and his share in khasra No. 2091, Hari Nagar to the extent of 5/2 1. In respect of properties in Village Tihar and Hari Nagar he declares that the same would be developed by the parties by making their contribution. He holds that in case the other parties are unable to contribute for the same, inter alia, he would advance money for this purpose on behalf of other parties, which would be

recoverable along with interest @ 16% per annum upon the sale of the properties in Tihar/ Hari Nagar. In paragraph 13, he enlists the mode of management of various properties and includes himself in the management of property situated in Khasra No. 2091. So far as the property bearing Khasra No. 2066/78, Hari Nagar, is concerned, he keeps to himself the entire management of the property.

34. I have narrated all these details only to show the extent of personal interest the arbitrator had in the various properties dealt with in the award. It is elementary that no person who has a personal interest in the subject matter of arbitration can function as an arbitrator unless such interest is known to the parties even before they nominate such a person as an arbitrator. A perusal of the arbitration agreement in question does not show that it was within the knowledge of the parties to the agreement that the sole arbitrator would stake a claim in the assets and properties which were the subject matter of arbitration. In case the arbitrator becomes interested in the matter of dispute at a later point of time, he is obliged u/s 12 of the Act to disclose without delay to the parties writing any circumstances which are likely to give rise to justifiable doubts as to his independence or impartiality. There is no communication by the arbitrator to the parties in writing about his interest in any of the properties dealt with by him in the award in question. It is elementary that no person can be a judge in his own cause. If a person is personally interested in the subject matter of dispute, and he has a personal stake in the dispute, he cannot function as an arbitrator, unless all the parties, despite being aware of this situation voluntarily agree to his acting as the arbitrator. An arbitrator, the moment he acquires an interest in the dispute pending before him, loses his mandate in law. I hold that the sole arbitrator had lost his mandate to act as an arbitrator as he became *de jure* unable to perform his functions as an arbitrator. Reference may be made to [Alcove Industries Ltd. Vs. Oriental Structural Engineers Ltd.](#),

35. I also find merit in the submission of learned Counsel for the petitioner that by the impugned award, respondent No. 1 has sought to nullify the compromise decree passed in Suit No. 282/1981. Two glaring instances are the award in respect of property No. 16B/6, Deshbandhu Gupta Road, Dev Nagar, New Delhi and property No. C-48, Sector-6, Noida. In Suit No. 282/1981, the parties had agreed in their compromise that the petitioner is the exclusive owner of the said property at 16B/6, Deshbandhu Gupta Road, Dev Nagar, New Delhi. Even after the passing of the compromise decree, attempts were made by Sh. A.N. Mehra and by Sh. Suresh Kumar Mehra to challenge the ownership of the petitioner in respect of that property were dismissed. Property No. C-48, Sector-6, Noida did not even form part of Suit No. 282/1981 or the compromise dated 09.03.1987. On the other hand, the compromise application bearing I.A. No. 1522/1987 clearly recorded that in respect of properties not included in the compromise, there is not dispute about the ownership. The award, however, seeks to apportion shares in these two properties to the other parties. Once a decree has been passed by a Court making a

declaration in respect of ownership and title of a property, it is not understood how the same could have been upset in a subsequent arbitration, unless the party in whose favour the declaration made by the Court stands, consents to a redetermination of his rights in respect of the same property or voluntarily agrees to a reduction or impairment of his rights in such a property. The decree passed by the Court would continue to bind the parties who were parties to the suit in which the decree is passed. No doubt, those who are not parties before the Court would not be bound by a decree which operates in personam. However, no Court or arbitrator can disregard the terms of the decree in subsequent proceedings between all or some of the parties who were parties to the proceedings in which the decree was passed. The arbitrator was probably conscious of this limitation and, therefore, recorded that the parties agreed that previous inter se agreements stand null and void. However, as already noticed this statement in the award is wholly unsubstantiated. The award of respondent No. 1 is clearly opposed to the Public Policy of India which is to uphold the sanctity of a decree passed by a Court of competent jurisdiction inter parties. This policy is incorporated in the Rule of res judicata contained in Section 11 C.P.C., and in Order 23 Rule 3A C.P.C.

36. The impugned award contains no reasons and basis on which the same has been made. Apart from stating that in one of the meetings at the residence of Mr. K.C. Mehra, in his absence, the other parties produced before him a blue print of the division of various properties amongst the parties to the dispute, the arbitrator does not give any further details. Even the so-called blue print is not contained in the arbitral record. It is not reflected as to when the said meeting was held. The award cannot be said to be the product of an adjudication of rights of the parties in dispute. It is merely expressive of the manner of division of various properties including those not forming part of the reference by the arbitrator in the manner that he may have considered fair, just and practicable. However, even this determination is vitiated since the arbitrator seeks to claim a share for himself in various properties which he has sought to divide through his award.

37. For all the aforesaid reasons, I am of the view that the award made by the sole arbitrator, the respondent No. 1, is completely unsustainable and is liable to be set aside in its entirety. The same has been made by the arbitrator:

- (i) by going well beyond the scope of the reference contained in the arbitration agreement;
- (ii) whose mandate stood terminated as he had personal interest and stake in the subject matter of dispute and, therefore, the arbitrator became de jure unable to act as an arbitrator;
- (iii) in breach of the principles of natural justice, inasmuch as, no opportunity appears to have been given to the parties to call for their statements of claim, replies, counter claims etc and no documents appear to have been filed in the

arbitration proceedings. No notice appears to have been issued to the parties including the petitioner of any of the hearings and no record has been maintained of the proceedings conducted by the arbitrator except in respect of the proceeding purportedly held on 20.12.1998 in the absence of the petitioner;

(iv) in derogation of the compromise decree passed by this Court in Suit No. 282/1981, which was not permissible considering the scope of the reference made before the arbitrator;

(v) Without assigning any reasons for the conclusions and findings reached by him.

38. Accordingly, the impugned award dated 24.12.1998 is hereby set aside leaving the parties to bear their respective costs.