Banwarilal Jaipuria Vs Sm. Ginni Devi Bhagat and Others

Court: Calcutta High Court

Date of Decision: Aug. 1, 1990

Acts Referred: Arbitration Act, 1940 â€" Section 16, 20, 30
Civil Procedure Code, 1908 (CPC) â€" Order 37 Rule 2
Registration Act, 1908 â€" Section 17, 17(1), 17(1)(b), 17(1)(c), 17(1)(v)

Citation: 96 CWN 1

Hon'ble Judges: Suhas C. Sen, J; Bhagawati P. Banerjee, J

Bench: Division Bench

Advocate: Bhaskar Gupta and Abhijit Chatterjee, for the Appellant; S. Tibrewal and Anil Gupta, for the Respondent

Final Decision: Allowed

Judgement

Suhas Chandra Sen, J.
This case arises out of an award made by Shri Brij Mohan Birla in an arbitration proceeding. The award was made

on 25th May, 1967 and was in the following terms :

WHEREAS I, Brij Mohan Birla, was appointed sole arbitrator in terms of the above arbitration agreement and whereas I duly entered upon the

arbitration and whereas after various legal proceedings between the parties to the arbitration proceedings ultimately by an order made by the

Supreme Court of India in Civil Appeal No. 271 of 1966 between Mangturam Jaipuria vs. Shilvanti Devi Jaipuria & Ors., I was empowered to

make my award by the 25th May, 1967 and whereas I have duly considered the various statements, counter statements and statements in reply

filed by the parties, books, and documents produced before me; and the submissions made before me;

I do hereby made my award as follows :-

1. I award and direct that Shri Mangturam Jaipuria, Shri Sitaram Jaipuria, Shri Rajaram Jaipuria, Sm. Jamuna Devi Jaipuria, Sm. Gayatri Devi

Jaipuria and Smt. Suniti Devi Jaipuria will jointly and severally pay to the persons mentioned in Column I of the. First Schedule hereto the amounts

respectively mentioned against their names in the column II of the said Schedule with interest thereon at the rate of 7 and 1/2 per annum from the

date hereof until payment.

2. I further award and direct that Shri Mangturam Jaipuria, Shri Sitaram Jaipuria, Shri Rajaram Jaipuria, Smt. Jamuna Devi Jaipuria, Smt. Gayatri

Devi Jaipuria and Smt. Suniti Devi Jaipuria will jointly and severally pay to the persons mentioned in Column I of the second Schedule hereto to the

amounts respectively mentioned against their name in Column II of the said Schedule with interest thereon respectively at the rate of 7 and 1/2 per

annum from the date hereof until payment.

3. I declare that all the assets (including all the ordinary shares of Swadeshi Cotton Mills Co. Ltd. of the film of Messrs. Anandram Gajadhar and

all its branches shall belong to Shri Mangturam Jaipuria, Shri Sitaram Jaipuria and Shri Rajaram Jaipuria absolutely. As regards preferred Ordinary

Shares of Swadeshi Cotton Mills Co. Ltd. the same will belong to the respective parties in whose name the same stand transferred and registered.

The aforesaid Shri Mangnturam Jaipuria, Shri Sitaram Jaipuria and Shri Rajaram Jaipuria will meet all liabilities (except tax liabilities) of Messrs.

Anandram Gajadhar and its branches and keep the parties to the above arbitration agreement fully identified against any action, demand of

proceedings in respect thereof. As regards tax liabilities, the parties will respectively meet the same in accordance with their liabilities according to

the visions of Income Tax laws concerning the same.

4. Except as aforesaid none of the parties will have any claim against the others or any of them with regard to the subject matter of this arbitration.

5. Each party will bear and pay its own costs or the arbitration proceedings.

The award, on the face of it, does not disclose any irregularity or illegality or misconduct on the part of the arbitrator in making this award but it has

been contended that the dispute was a such a magnitude that the award could not be made and published in this fashion in a short span of time.

2. The award was set aside in the Court below, mainly on two grounds; (1) the award was not registered, and (2) it was passed in such haste as to

amount to misconduct on the part of the Arbitrator.

3. The facts of the case leading to making of the award have been stated in the judgment under appeal as under :

The Jaipurias, who are parties to this suit constitute one of the richest families in India which control, manage and own various businesses all over

India including management of various Limited Companies of which the said family own and control majority of shares. The total value of the assets

of the Jaipurias would exceed several crores of rupees. As a natural result various litigations by way of suits, company proceedings were started

and continued between various groups of the said Jaipuria family in different Courts of India including in the supreme Court of India. It further

appears that Mangturam Jaipuria along with his son and some Ojhas together formed one group and Banwarilal Jaipuria with other members of the

Jaipuria family formed another group and disputes and differences arose in respect of various businesses and enterprises of the Jaipuria family or

the businesses in which the Jaipuria family was concerned or in control. The Jaipuria family established a partnership firm in the name of

''Anandaram Gajadhar'' in or about the year 1921 and by a Deed of Partnership dated the 7th of March, 1940 entered between Mangturam for

self and as Karta, Gajadhar, Motilal, Puranmal, Bhikraj Ram Narayan Ojha and Shivram Poddar as partners of the said film of Anandram

Gajadhar. In course of the business including management and shareholdings of the Jaipuria group of Companies particularly those of Swadeshi

Cotton Mills Ltd., Kanpur, Jaipuria Brothers Ltd., various disputes and differences arose and by arbitration agreement dated the 2nd of July,

1957, the said disputes were referred to the arbitration of Shri G.D. Birla failing him Shri B.M. Birla. The said arbitration agreement seems to have

proved abortive. Thereafter between the parties in respect of management and control of Swadeshi Cloth Dealers Ltd., Swadeshi Cotton Mills

Ltd., Jaipuria Brothers Ltd. and Ors. and ultimately all the said disputes between the parties by an arbitration agreement in writing dated the 13th

of March, 1961 were referred to the arbitration of Shri Birla, material portions of the said arbitration agreement are set out hereunder :

MEMORANDUM OF AGREEMENT between the several parties whose names are set forth hereunder and have signed these presents whereby

it is agreed and witnessed as follows :

1. All disputes and differences whatsoever between the parties whose names are set forth hereunder and referred to the sole arbitration of Shri

Braj Mohan Birla of No. 8, India Exchange Place, Calcutta.

2. The said arbitration shall have all summary powers to hear and decide the disputes and shall be entitled to take and reject such evidence as he

shall think fit and proper in his absolute discretion.

3. The parties hereto agree to produce such paper and documents evidence and information as shall be in their power, control and possession

and/or as they may be from time to time directed by the said Arbitrator to produce.

4. The parties hereto agree to carry out all directions and orders that will be from time to time made by the said Arbitrator.

5. The said Arbitrator shall be entitled to make one or more award or awards and shall also be entitled to make interim award or awards.

6. The parties hereto agree to attend before the said Arbitrator at such place and places where the said arbitrator shall from time to time decide to

hold sittings of arbitration.

7. The said Arbitrator shall be entitled to appoint and engage and to take assistance from such assistants accountants, surveyors, lawyers, valuers

and all other persons on such remunerations and other terms as shall be deemed necessary by him in this sole discretion.

8. The parties hereto agree to make, sign execute, register and deliver such papers and documents as shall be form time to time directly by the said

Arbitrator. IN WITNESS THEREOF the parties whose names are set forth hereunder sign these presents this thirteenth day of March, one

thousand nine hundred and sixty one.

4. The signatories to the said arbitration Agreement are Gajadhar Jaipuria, Mani Devi, Banwarilal Jaipuria for self and as natural guardian of his

minor sons - deep Kumar and Praveen Kumar, Sm. Bimala Devi Jaipuria, Sm. Shilvanti Devi Jaipuria for self and as natural guardian of her minor

son - Nandlal and minor daughter Urmila, Pramila, Nirmala and Sarala, Basudeo Bhuwalka for self and as natural guardian of Sm. Kalvati Devi

Bhuwalka, Panchhordasji Ganeriwal as natural guardian of Sushila Devi Ganeriwala, Damodarial Jaupirua, Sm. Bhagwati Devi Jaipuria, Harish

Kumar Jaipuria for self and guardian of his minor wife Uma Devi Jaipuria, Ramlal Jaipuria for self and as natural guardian of his minor sons Alok

Kumar and Umesh Kumar, Santosh Devi Jaipuria, Bhikhraj Jaipuria for self and as natural guardian of his minor sons Narendra Kumar, Surendra

Kumar, Rajendra Kumar, Gini Devi Jaipuria. Krishna Kumar Jaipuria, Maina Devi Jaipuria, Vijaya Kumar Jaipuria for self and as natural guardian

of his minor sons Ajay Kumar and Sanjay Kumar, Rukmani Devi Jaipuria, Mahendra Kumar Jaipurira, Premlata Jaipuria, Shivram Poddar, Janki

Devi Poddar, Jagdish Prasad Poddar, Radha Devi Poddar, Shree Prakash Poddar for self and as natural guardian of his minor son Madhusudan,

Sushila Devi Poddar, Mungtaram Jaipuria for self and as Karta, Jamuna Devi of his minor son Asok Kumar Jaipuria, Gayatri Devi Jaipuria,

Rajaram Jaipuria for self and as natural guardian of his minor sons Lav and Kush, Suniti Devi Jaipuria, Jamuna Devi Ojha, Purushottam Ojha for

self and as naturala guardian of his minor sons Ram Prakash and Shiv Prakash, Bulladevi Ojha, Madan Mohan Ojha for self and as natural

guardian of his minor wife Sm. Saraswati Devi Ojha.

5. Thereafter the arbitrator Mr. B.N. Birla entered upon the reference and held a few sittings. Some of the suits instituted by the parties were

withdrawan but there were also proceedings in respect of the said arbitration in the Court u/s 20 of the Arbitration Act and also for revoking the

authority of the Arbitrator, extension of time to make and publish the award by the Arbitrator and after various proceedings by an order dated

29th of January, 1965, the Supreme Court allowed the Arbitrator to continue the arbitration proceedings but the Arbitrator was restrained from

pronouncing the award.

6. Thereafter the arbitrator gave directions for filing the statements with his Secretary by a notice dated the 3rd of September, 1965. The

proceeding before the Arbitrator was not very smooth and plain sailing after the various statements'' were filed by the parties before the arbitrator,

Sitaram Jaipuria on the 15th of March, 1965 made an application for removal of the Arbitrator and revocation of authority of the Arbitrator which

ultimately terminated by the Supreme Court order dated the 25th of January, 1967, wherein the appeal was withdrawn and the Supreme Court

extended the time to make the award by the 25th of May, 1967. Thereafter on the 25th of May, 1967 the award was made in there matter by Sri

B.M. Birla which is under challenge in this application.

7. The first question is whether the award should have been registered. The contention of the appellant is that the award prima facie does not deal

with any immovable property and as such there is no question of registration of such an award. Unless it can be shown from the reading of the

award that some immovable property was transferred, the question of registration of the award could not arise. My attention was particularly

drawn to clauses (b) and (e) of Section 17(1) of the Registration Act which are as under :

17(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been included

on or after the date on which the act No. XVI of 1944, or the Indian Registration Act, 1866 (XX of 1989), or the Registration Act, 1871 (VII of

1871), or the Indian Registration Act, 1877 (III of 1977), or this Act came or comes into effect, viz. :

(a). * * * * * *

(b). other nontestamentary instruments which purport or operate to Create, declare, assign, limit or extinguish, whether in present or in future, any

right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or any immovable property;

(c). *** ***

(d). non testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award

purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, of the value of one hundred rupees and upwards,

to or any immovable property.

Provided that the State Government may, by order published in the official Gazette, exempt from the operation of this subsection any lease in any

district or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by it do not stand fifty rupees.

8. It was contended on behalf of the appellants that the award under challenge did not have the effect of creating, declaring, assigning, limiting or

extinguishing any right, title and interest whether vested or contingent to immovable property. The award had dealt with certain shares in various

companies and also the interests of the partners in a partnership firm. Mangturam group was given the companies and also the partnership firms

and the other groups who were not in the Mangturam group were given money. There was nothing on the face of the award which required

registration of the award.

9. It has been contended on behalf of the respondents that the partnership had various interests in land. As a result of that award the landed

properties all come to belong to Mangturam group. This award really created the title of the Mangturam group to the landed property and

extinguished the rights of the appellants to the said properties. Therefore, this document requires registration.

10. In any event it was argued that there was a clear declaration about the rights of the parties to the immovable properties of the partnership firm.

Therefore, such an Award was compulsory remittable u/s 17 of the Registration Act.

11. On behalf of the appellant it was contended that if shares in the partnership were transferred, then no question of registration arose, even if

some of the assets of the partnership were immovable properties. In such a case the Court must not find out properties of the partnership firm and

decide the question of registration on the basis of the nature of the assets of the firm. The assets of the firm may comprise of movable properties or

irremovable properties or both but the share of a partner in a partnership firm is always an immovable property.

12. In support of this preposition reliance was placed on a judgment of the Supreme Court in the case of Addanki Narayanappa and Another Vs.

Bhaskara Krishtappa and Others, . In that case the question was whether a document recording the previous facts of dissolution of a partnership

and relinquishment of interest of the partner in the partnership assets by way of adjustment was compulsorily registerable u/s 17(1)(c) of the

Registration Act. The members of two joint Hindu families A and B had entered into partnership business of hulling rice etc. Subsequently a

document styled as karar was executed between the two families. This document was unregistered and recorded the fact that the partnership had

come to an end and that A family had given up their Share in the machines etc, and in the business and that they had made over the same to 3

alone completely by way of adjustment. In a subsequent suit for dissolution of partnership and accounts brought by they members of A family was

contended that since the partnership assets included immovable property and the document recorded relinquishment by the members of the A

family of their interest in those assets, this document was compulsorily registrable u/s 17(1)(c) of the Registration Act and that as it was not

registered it was inadmissible in evidence to prove the dissolution of the partnership as well as the settlement of accounts. It was held by the

Supreme Court that the interest of the partners of A family in the partnership was movable property and the document evidencing the

relinquishment of that interest was not compulsorily registrable u/s 17(1)(c) of the Registration Act.

13. If the principles laid down in this case is to be applied, it will be seen that in this case the Award contained a declaration that all the assets of

M/s. Anandram Gajadhar and their branches would belong to Mangturam Jaipuria, Sitaram Jaipuria, Rajaram Jaipuria absolutely. There was a

direction in the Award for making payment of various sums of moneys to the other members of Jaipuria family. In effect some of the partners of

Anandram Gajadhar had given up their right title and interest in the partnership and were compelled to give up their share in the partnership in

favour of Mangturam Jaipuria group. Mangturam Jaipuria group became the owners of all the ordinary shares of Swadeshi Cotton Mills and also

of the firm of M/s. Mangturam Jaipuria absolutely. There was also some other direction about the liabilities of the firm. That is however not very

material for the purpose of this case. It appears to me that under the award the members of Jaipuria family who did not belong to Mangturam

group had to relinquish their shares and were paid certain sums of moneys in lieu thereof. Relinquishment of shares by the outgoing partners in the

partnership naturally will have the effect of increasing the interest of the continuing partners in the partnership firm. That precisely was the position in

the case of Addanki Narayanappa (supra). A family had given up their shares in the business and had made over the same to B alone completely

by way of adjustment. The document recording relinquishment by the members of A family of their interest in the partnership firm was held by the

Supreme Court as not to be compulsory registered. I fail to see, how the present case can be distinguished from the case of Addanki

Narayanappa (supra). The principle laid down to that case by the Supreme Court observed in that case that ""in the case before us as also in R.N.

Samuvier and Another Vs. R.N. Ramasubbier, the document cannot be said to convey any immovable property by a partner to another expressly

or by necessary implication. If we may recall, the document executed by the addanki partners in favour of the Bhaskara partners records the fact

that the partnership business has come to an end and that the latter have given up their share in ""the machine etc. and in the business"" and that they

have ""made over same to you alone completely by way of adjustment"". There is no express reference to any immovable property herein.

14. In the instant case also the Award does not expressly refer to any immovable property.

15. It has been generally stated in the Award that the firm will belong to Mangturam Jaipuria. The Supreme Court further observed.

It seems to us that looking to the scheme of Indian Act no other view can reasonably be taken. The whole concept of partnership is to embark

upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever

is brought in would cease to be exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the

partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would,

therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership

property. He would not be able to exercise his right even to the extent of the share in the business of the partnership. As already stated his right

during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the

dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of

resolution of retirement after a deduction of liabilities and prior charges. It is true that even during the subsistence of the partnership a partner may

assign his share to another. In that case what the assignee would get would be only that which is permitted by Section 29(1), that is to say, the right

to receive the share of profits of the assignor and accept the account of profits agreed to by the partners.

16. Therefore, from the judgment of the Supreme Court it clearly appears that what the outgoing partners got from a partnership after the

dissolution of the partnership or with retirement from his own partnership was the value of his share in the net partnership assets as on the date of

dissolution or retirement after deduction of all liabilities and prior charges. In view of the principles laid down by the Supreme Court and having

regard to the language of the Award, it must be held that when the outgoing partners give up their shares in the partnership, the incoming Partners

or the existing partners acquired those shares absolutely.

17. Another point in this connection that has to be borne in mind is that the existing partners and the outgoing partners may have to execute certain

deeds for the purpose of adjustment of the assets of the partnership, including immovable properties, but that will be as consequence of

implementation of the award. In such a case the award will come within the ambit of section 17(2)(v) of the Registration Act. Reference may be

made in this connection to the judgment of the Supreme Court in the case of Ratan Lal Sharma Vs. Purshottam Harit, wherein it was held by

Dwivedi J. as follows :

It is well settled now that the share of a partner in the asset of the partnership which has also immovable properties is movable property and the

assignment of the share does not require registration u/s 17, Registration Act. (See Ajudhia Prasad Ram Parshad vs. Sham Sunder, AIR 1947 Lah

13 P. 20 FB); Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, and Commissioner of Income Tax, West Bengal,

Calcutta Vs. Juggilal Kamalapat, . But the award with which we are concerned does not seek to assign the share of the respondent to the appellant

either in express words or by necessary implication. We set out the relevant portion of the award :

(We) make our award as follows :

(1) The factory and all assets and properties of New Bengal Engineering Works are exclusively allotted to Dr. Ratari Lal Sharma, who is

absolutely entitled to the same. He will pay all liabilities of the factory.

(2).....

(3).....

(4).....

(5).....

(6).....

(7).....

It was held that the award had to be registered because it did not seek to assign the share of the respondent to the appellant either in express

words or by necessary implication. It categorically declared that the factory and all assets and properties were being exclusively allotted to Dr.

Ratan Lal Sharma.

18. In the instant case there is no specific mention in the award of any irremovable assets of the firm. If the transfer of shares takes place, whether

voluntarily or involuntarily that will not make any difference to the principle laid down by the Supreme Court that the share or a partner in the

partnership assets was moveable property even though the assets of the partnership included the immovable property.

19. The last Supreme Court Judgment cited on this point was the case of Capt. (Now Major) Ashok Kashyap vs. Mrs. Sudha Vasisht & Anr.,

AIR 1987 SC 851. I that case it was observed :

Section 17(1)(b) of the Registration Act enjoins that any nontestamentary instrument which purports or"" operates to create, declare, assign limit or

extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards,

to or in immovable property should be registered. Therefore, the question is, does not document itself extinguish or purport to create or declares

any right in immovable property. It certainly declares the share of the parties in the property but it enjoins that only upon payment of Rs. 40,800/-

Mrs. Vasisht would vacate the house. It further enjoins that ""she will be entitled to live in the house in the portion occupied by her till the full

payment of Rs. 40,800/- is made to her and she will not be liable to pay any rent for the occupation of the portion and on the said payment, she

will not have any right and also no interest left in the said property"". So her right in the said property and her interest in the property ceases on

payment of the amount of Rs. 40,800/- and not otherwise, not by the operation of document itself. The document itself creates a right by itself to

get Rs. 40,800/- and right to obtain the payment and on payment the obligation of relinquishment of her right or interest in the property. It does

nothing more.

20. It was specifically argued before the Supreme Court that the award affected the partition of immovable property and affected the rights in

immovable property. It was held by Mukherji, J. (as His Lordship then was) :

We are of the opinion that the High Court was not right in he view it took on this aspect of the matter. The document in question did not affect the

partition, if read properly.

Therefore, the view of the Supreme Court was that an award even though it purported to declare rights to the properties was not required to be

registered because the party claiming under the award had to pay to the other beneficiaries of the award certain sums of money. It was on the

payment of the money that they could get the benefit of the award in respect of the other property.

21. In this case also there is a direction for payment of money to outgoing partners without which no change in the shares of the parties in the

partnership could take place. Moreover the award does not specifically direct or declare any change in the right to any immovable property or any

title to any immovable property.

22. There was an earlier judgment of the Supreme Court in the case of Mrs. Tehmi P. Sidhwa and Others Vs. Shib Banerjee and Sons Pvt. Ltd.

and Another, . In that case also the scope of sections 17(1)(v) ans 17(2)(v) were examined. In that case relevant part of the award was as under :

1. I hold an award that the said Tohmi Pheroze Sidhwa, Almitra Pheroze Sidhwa and mani Rustom Sidhwa pay the total contribution of Rs.

32,500/- (Rupees Thirty two thousand five hundred) as their one -fourth share in the cost of the land at Najafgarh Road, Delhi, being plot No.

71/5 of the Industrial Area Scheme of the Delhi Improvement Trust and measuring about 7246.67 square yards and the factory and other builders

and compound wall constructed thereon and occupied by the Delhi Floorings Private Ltd. that the said Tehmi Pheroze Sidhwa, Almitra Pheroze

Sidhwa and Mani Rustom Sidhwa are between them entitled to a onefourth share or interest in the said land and buildings and in the rents and

profits thereof; that as between themselves the shaves or interest of the said Tehmi Pheroze Sidhwa, Almitra Pheroze Sidhwa and Mani Rustom

Sidhwa are as follows:-

Tehmi Pherose Sidhwa 3/32 share on the almitra Pheroze Sidhwa 3/32 share whole Mani Rustom Sidhwa 2/32 share property.

2. A lease of the said property has been granted by the Delhi Improvement Trust to Shib Banerjee and Sonex Private Ltd. and the said property

stands in the name of Shib Banerjee and Sons Private Ltd. I hold and award that Shib Banerjee and Sons Private Ltd. hold the said property upon

Trust as to one-fourth thereof for the said Pheroze Sidhwa Almitra Pheroze Sidhwa; and Mani Rustom Sidhwa in the share as above mentioned

and that the said Tehmi Pheroze Sidhwa, Almitra Pheroze Sidhwa and Mani Rustom Sidhwa are entitled to a one-fourth share in the rents and

profits of the said property from 1st January, 1960.

3. I award an direct that Shib Banerjee and Sons Private Ltd. do pay to the said Tohmi Pheroze; Sidhwa, Almitra Pheroze Sidhwa and Mani

Rustom Sidhwa the onefourth share of the rents and profits of the said property at the rate of Rs. 93.75 np. per month in Tehmi Pheroze Sidhwa.

Rs. 93.75 np. per month to Almitra Pheroze Sidhwa.

Rs. 62.50 np. per month to Mani Rustom Sidhwa.

From 1st January, 1960 to 30th April, 1962 (both days inclusive) and thereafter do pay to them onefourth share of the rents and profits of the said

property in the aforesaid share.

4. I award and direct that Shib Banerjee & Sons Private Ltd. do forthwith execute such documents as may be necessary for declaring the one-

fourth share of the said Tehmi Pheroze Sidhwa, Almitra Pheroze Sidhwa and Mani Rustom Sidhwa in the said property and do execute as soon as

possible such documents as may be necessary for transferring the said property and the leave from the Delhi Improvement Trust (subject to the

existing tenancy of Delhi Floorings Pvt. Ltd.) to the joint names of themselves and the said Tehmi Pheroze Sidhwa, Almitra Pheroze Sidhwa and

Mani. Rustom Sidhwa as tenants in common in the following shares :-

Shib Banerjee & Sons Private L 24/32 share

Tehmi Pheroze Sidhwa 3/32 share

Almitra Pheroze Siding Sidhwa 3/32 share

Mani Rustom Sidhwa 2/32 share

The out of pocket expenses of such documents (including amount payable for fee of cost to the Delhi Improvement Trust, Stamp Duty,

Registration charges and expenses of plan shall be borne by the aforesaid parties in proportion of their respective shares in the said property. The

professional charges of the lawyers of the parties in connection with such documents shall be borne by the respective parties.

In clause (1) of the award there was a clear declaration that Tehmi Pheroze sidhwa, Almitra Pheroze Sidhwa and Mani Rustom Sidhwa are

between them entitled to a onefourth share of interest in the said land and buildings and in the rents and profits thereof; that as between themselves

the shares of interest of the said Tehmi Pheroze Sidhwa, Almitra Pheroze Sidhwa and Mani Rustom Sidhwa are as follows :-

Tehmi Pheroze Sidhwa 3/32 share of the whole.

Almitra Pheroze Sidhwa 3/32 share of the whole.

Mani Rustom Sidhwa 2/32, share of the whole property.

Even in this case the Supreme Court held that the award was not compulsorily registrable because further documents had to be executed to

implement the award.

23. In the instant case that what the award has brought about is a change in the composition of the partnership firm. The partnership firm has not

been dissolved. Some of the partners have been directed to go out of the partnership. Mangturam and his two sons are to be the only partners.

Mangturam has always been a partner of the partnership in his capacity as Karta of a Hindu undivided family of which his two sons Rajaram and

Sitaram are members. Under clause 3 of the award both the assets and liabilities of the partnership will devolve upon Mangturam and the incoming

partners. The outgoing partners will be paid certain sums of money. In that view of the matter, we are of the view that the award was not

compulsory registrable u/s 17(1) of the Indian Registration Act.

24. We have carefully considered the judgments of the Supreme Court cited before us and we have also set out in extenso the arbitration awards

in some of these cases where the documents containing the awards were held not to be compulsorily registrable. In view of the principles laid

down by the Supreme Court the aforesaid cases, we are of the view that it was not necessary to register the award u/s 17(1) of the Registration

Act in the facts and circumstances of this case.

25. The next point is about the allegations of misconduct of the arbitrator. The arbitrator was given summary power by the agreement between the

parties. The arbitrator was also empowered to take evidence. It is the contention of the respondents that in the facts and circumstances of the case

the arbitrator should have taken evidence. It was pointed out that although the arbitrator was empowered to have recourse to summary

proceedings, the arbitrator actually decided to hear the case and it was impossible to decide the case within a short span of 3/4 days of hearing.

26. This argument also is of no substance. The parties have chosen Sri B.M. Birla as the arbitrator, for his knowledge of business world, the

working of the companies and this partnership firm. The dispute really was about the mismanagement of business by Mangturam Jaipuria. The

allegation was that one group was being kept out of the profits of the companies and the partnership firm. Even allegations were made that the

shares of certain companies were being sold at an under-value to enable Mangturam group to get absolute control of those companies. Four suits

were pending in the Calcutta High Court about these disputes. All the four suits were withdrawn and the entire dispute was referred to arbitration

of Sri B.M. Birla. Sri Birla was given summary powers to decide the case so that Sri Birla as arbitrator could bring the disputes to a speedy end by

following the summary procedure.

27. Mr. Tibrewal has argued that summary power is a vague term, unknown to law. The arbitrator being a quasi judicial authority, could not refuse

to hear evidence in a case like this.

28. I am unable to uphold this argument. Even the courts of law can dispose of cases summarily without any evidence in certain circumstances.

29. Order XXXVII Rule 2 of the CPC deals with summary suits. Such suits have to be disposed of summarily without hearing any evidence. The

court, of course, has the power to allow the defendant to defend the suit and witness action may be necessary in such a case. But, ordinarily,

where such leave is not granted, the case is to be tried summarily without any oral evidence.

30. In this connection, reference may also be made to the procedure laid down in Chapter XIIIA of the Calcutta High Court Rules, Original Side,

where summary power has been given to a Court to dispose of a case without any witness action. The arbitration Board of the Bengal Chamber of

Commerce regularly arbitrates in disputes between its members. The arbitrators have summary power and dispose of a large number of case

without hearing any evidence.

31. In the instant case, the arbitration agreement allowed the arbitrator to dispose of the case summarily. The arbitrator was also empowered to

call witnesses. This can only mean that the arbitrator could dispose of the case summarily. He could also call for oral evidence, if he so thought fit.

But the procedure to be adopted were left by the parties to the judgment and wisdom of the arbitrator. Merely because no oral evidence was

taken, it cannot be said that the proceedings were bad.

32. Mr. Tibrewalla has argued that the dispute was of such a nature that unless the witnesses were called, justice could not be done. In my view,

the entire purpose of giving summary power to the arbitrator would be defeated if Mr. Tibrewalla''s argument is to be accepted. It would mean

following the elaborate Court procedure which would have prevented the arbitrator from rendering speedy and expeditious justice. The parties

gave summary power to the arbitrator in the full knowledge as to the nature and magnitude of the dispute.

33. Moreover, it cannot be denied that hearing was given to all the parties in extenso, notes were taken at the hearing and even notes taken on

course of the hearing have been incorporated in'' some of the minutes of the hearing. It appears from the minutes that the stenographer who

attended the arbitration proceedings had taken in extenso the notes in course of hearing of the case.

34. A point was taken that the Arbitrator had merely heard the case for 3/4 days and had a closed mind. The facts, however, are otherwise. All

the documents were filed before the arbitrator and nearly a month and a half elapsed between, the filing of the documents and announcement of the

award. It cannot be said that the arbitrator acted post haste.

35. I shall now refer to some of the decisions that were cited. Reference was made to a decision in the case of Mediterranean & Eastern Export

Co. Ltd. vs. Fortress Fabrics (Manchester) Ltd. reported in 1948 (2) AER 186. There an application was made for setling aside the award that

no expert evidence had been called by the arbitrator, in a dispute where the buyer had claimed that the goods supplied were not upto the sample

and were unmerchantable and unfit for the intended purposes. The arbitrator found that there was a breach of contract on the part of the buyers

and awarded damages in favour of the sellers. Lord Goddard held that the parties had chosen a person as arbitrator, who himself was an expert

and because of his knowledge in the subject matter of the dispute, he was appointed the arbitrator. It was held in that case that the arbitrator was

entitled to award compensation because all disputes had been referred to him. Lord Goddard further held as follows :

Whether the buyers contested that statement does not appear, but an experienced arbitrator would know, or have the means of knowing, whether

that was so or not and to what extent, and I see no reason why in principle he should be required to have evidence on this point any more than or

any other question relating to a particular trade. It must be taken, I think, that, in fixing the amount that he has, he has acted on his own knowledge

and experience. The day has long gone by when the courts looked with jealousy on the jurisdiction of arbitrators. The modern tendency is, to my

opinion, more especially in commercial arbitrations, to endeavour to uphold awards of the skilled persons that the parties themselves have selected

to decide the questions at issue between them. If an arbitrator has acted within the terms" of his submission and has not violated any rules of what

is so often called naturala justice the Court should be slow indeed to set aside his award. In my opinion, the arbitrator did act in this case within the

submission, and I think also he has acted as the parties intended he should act and I see no reason for interfering with his award. This motion fails

and must be dismissed with costs.

35. The case of D.L. Miller and Co. Ltd. Vs. Daluram Goganmull, was a case of an arbitration award given by Bengal Chamber of Commerce.

One of the arguments was that the right to crossexamine the representative of one of the parties was denied. It was argued that in the interest of

justice, the crossexamination should have been allowed. The arbitrator was guilty of misconduct for not allowing the crossexamination, as prayed

for by the applicant. It was held by P.B. Mukherjee, J. (as His Lordship then was) as follows :

The doctrine of Arbitrators legal misconduct has been so overworked in recent years that across the whole branch of case law on this point one

finds the blaxing trial of principles of natural justice. They are discussed and agitated in an atmosphere of complete unreality and divorced from the

facts of each case.

Somehow the obvious point is missed in most of such cases that when the parties agree to go to arbitration they stipulate not so much for vague

principles of natural justice as for concrete principles of contractual justice according to the contracts of the parties and their specific stipulations.

Where the contract of arbitration itself prescribes private procedure of its own, then so long as such agreed private procedure is not against the

laws and the statutes of the land then such agreed Procedure must prevail over the notions, and principles of natural justice. If the origin of the

application of the principle of natural justice to arbitration procedure is remembered then this- confusion is easily avoided. When a contract or

agreement for arbitration itself does not lay down any particular procedure for the conduct of the arbitration, the Courts have said that the

arbitrators must follow the principles of natural justice which are no other than common sense standards of fairness and impartially such as no party

should be condemned unheard or without representation. It was necessary to do that because the arbitrators are not strict courts of law guided by

the CPC and Evidence Act laying- down massive details of procedure.

In the absence of any procedure, prescribed either by statute or by contract, the arbitrators must follow the principles of natural justice, or else

there is nothing for the arbitrators to fall back upon to ensure fair adjudication. It will therefore be contrary to its origin and raison detre to apply

natural justice where an available procedure is prescribed by contract or Statute. Parties are forced to depart from natural justice by Statute and

similarly parties can agree to depart from natural justice. In fact they very often do for avoiding delay, expense and formality. In the case before me

they have done so in unmistakable terms.

It was further observed :

I hold on the facts of this case that there was no legal misconduct on the part of the arbitrator in refusing to allow those specific questions to be put

in crossexamination. Each one of them, in my opinion, was wholly unnecessary. I repeat what was necessary or unnecessary was a matter for the

arbitrators to decide in this case and they were competent so to decide within the terms of the Arbitration Clause in this case, and it so happens

that their decision appears to agree with mine.

36. Our attention was also drawn to another decision of this Court in the case of Monmotha Nath Mukherjee Vs. Shebaits of Sree Sree Sreedhar

Jew and Another, , where in para 8 of the said decision it was observed as follows :

On the question of refusal to hear evidence I am not satisfied on the affidavit that there was any refusal on the part of the arbitrator to hear

evidence in the manner alleged by the applicant. I hold that the facts of the case placed before me do not at all justify the conclusion that there was

any refusal to hear any evidence on the part of the Arbitrator. Mr. Das''s argument on this branch of his case really boiled down to a consideration

whether the appraisement of the evidence by the Arbitrator was correct or not and not whether the Arbitrator decided without any evidence at all

where evidence was necessary. In my opinion, appraisement of evidence by the Arbitrator is ordinarily never a matter which this Court questions

and considers. The parties have selected their own forum and the deciding forum must be conceded the power of appraisement of evidence. It is

not a question here in this case of any violation of natural principles of justice in refusing to give a hearing to any party or in refusing to have the

evidence of a particular party. The arbitrator, in my opinion, is the only judge of the quality or the quantity of evidence and it will not be for this

Court to take upon itself the task of being a judge of the evidence before the arbitrator. It may be possible that on the same evidence the Court

might have arrived at a different conclusion than the arbitrator, but that by itself is no ground in my view of setting aside an award of an arbitrator. It

is familiar learning but requires emphasis that by S.I., Evidence Act, the Evidence Act in its rigour is not intended to apply to proceedings before an

arbitrator.

37. It will appear from these decisions where the Arbitrator has been given summary power to decide a case it is the Arbitrator alone who should

decide whether he should hear the case on evidence. If the Arbitrator decides not to hear any oral evidence and disposes of the case in exercise of

the summary power given to him by the parties on the basis of documents and statements filed before him, the decision of the arbitrator can not be

questioned on the ground that he has disposed of the case summarily. The arbitrator might have heard the case on evidence. But, if the arbitrator

felt that he could dispose of the case on the basis of the documents filed without any oral evidence, the arbitrator was at liberty to do so. It is a

matter of discretion of the arbitrator. Nothing has been shown in this case to indicate that the arbitrator has exercised his- discretion illegally or

improperly. The summary power had been conferred upon the arbitrator by the parties for quick disposal of the case. After the case is disposed of

summarily, it is not open to one of the parties to contend that the arbitrator should have followed the elaborate procedure of taking evidence.

38. A point was taken that the respondents wanted to issue subpoena to certain parties. An application for issue of subpoena was filed on the very

last day of the hearing. Several directions were given earlier by the arbitrator for filing statements'' documents, etc. but those were not complied

with. The conduct of the respondents through out the course of the litigation was obstructive. Various suits and applications were filed from time to

time in this Court and also elsewhere to prevent the arbitrator from deciding the case. Even after the matter reached the Supreme Court and

directions were given by the Supreme Court, suits were filed in Kanpur to delay the hearing of the arbitration case.

39. Another peculiar feature was that every day after the hearing of the case by the arbitrator, the respondents'' solicitor invariably raised some

objection to the arbitration proceedings. The respondents were not keen to obtain speedy justice but tried their utmost to prevent the arbitrator

from coming to a decision on the disputes.

40. The respondents also took several other points to assail the arbitration award. It was argued that the arbitration agreement does not provide

that the arbitrator would be entitled to use his personal knowledge. Assuming that he could use his personal knowledge, it was for the arbitrator to

disclose to the parties as to what Personal knowledge he was using. He had not indicated any such thing to the parties.

41. The arbitrator was chosen by the parties and was given summary power because of his experience and knowledge. If such knowledge is used

it is not open to any of the parties to complain that the arbitrator has decided the case on the basis of his own knowledge in the matter. Moreover,

as many as four suits were withdrawn by the appellants for the purpose of referring the dispute to arbitration. The whole idea was to get the matter

disposed of or settled speedily by the arbitrator specifically named in the arbitration agreement. The arbitrator, who heard the case and gave the

award, was a wellknown man in the business world. He was also a family-friend of the parties and the family members of the parties were well-

known to him. Because of his knowledge and understanding, he was in a position to decide the dispute between the parties speedily and efficiently.

The parties themselves chose the arbitrator so that the disputes between the Parties could be brought to an end.

42. As Lord Goddard observed in the case of Mediterranean & Eastern Export Co. Ltd. vs. Fortress Fabrics 1948(2) AER 186, ""the modern

tendency is, in my opinion, more especially in commercial arbitrations, to endeavour to uphold the awards of the skilled persons that the parties

themselves have selected."" As many as 4 suits filed by the appellant for various reliefs were withdrawn to refer the disputes to an arbitrator, who

was a business man and who knew the members of Jaipuria family quite well, for a long time. Summary power was conferred upon The arbitrator

for disposal of the disputes. If it was the intention of the parties that the arbitrator would not use his personal knowledge of business and also other

matters involving the Jaipuria family in any way then that would have been provided in the agreement. If a person who knows the members of the

family for very many years and is well versed in business is chosen as an arbitrator, the natural presumption is that he was chosen because of his

special attainments. If the arbitrator has to follow the Court procedure in all its details then the withdrawal of the 4 suits and conferment of

summary power upon the arbitrator does not make any sense. I am unable to uphold the contention that the arbitrator should have followed the

Court procedure and also should have applied the rules of evidence as contained in the Evidence Act as to admissibility of documents for the

purpose of determination of this case. The arbitrator might have admitted documents which had not been proved before him, the arbitrator might

also have not allowed any witness action or cross-examination in respect of any claim or document. That does not make the arbitrator guilty of

misconduct because the arbitrator had been given summary power of disposal of the case. The arbitrator cannot be said to have exercised any

power which had not been given to him by the arbitration agreement.

43. It was next contended that the arbitrator has acted liked a tyrant. But merely because the arbitrator has exercised summary Powers, it can not

be said that he acted like a tyrant. If that argument is to be accepted, the Arbitrator will never be able to exercise the summary powers conferred

upon him by the parties to the disputes.

44. It was also contended that the arbitrator should not have admitted the additional statements. The additional statements were filed after taking

inspection of the documents disclosed by some of the parties. It was open to the respondents also to take inspection of documents and file

additional statements. They did not avail of this opportunity.

45. The respondents have also made a point that they were not allowed inspection of certain documents but no particulars have been given by the

respondents as to which particular documents they wanted to inspect.

46. The next contention is that Jaipuria Brothers Ltd. were the holders of shares in Swadeshi Cotton Mills. The Jaipuria Brothers Ltd, were not

represented in the arbitration proceedings, although the shares had been dealt with. In fact, it was contended, that the shares should not have been

dealt with at all. The arbitrator in his award has not directed any transfer of shares of any of the parties in Swadeshi Cotton Mills. The Arbitrator

has merely awarded certain monies in favour of the appellant. No Award has been made for or against the Jaipuria Brothers Ltd.

47. Lengthily arguments were advanced on behalf of the respondents on the ground that there were two minors, involved in this dispute and that

they were not properly represented and the respondents had taken that stand also in other proceedings. Masud J. held that the stand taken by the

respondents was entirely malafide.

48. It appears that on an application of the appellant group one Mr. S.K. Mukherjee, solicitor was appointed Guardian ad-interim of Lav Kumar

Jaipuria and Kush Kumar Jaipuria, the then two minor sons of Rajaram Jaipuria. An application was made by Rajaram Jaipuria, the father of the

two minors, for setting aside the appointment of Mr. S.K. Mukherjee and for appointing him as the guardian ad litem, being the natural guardian of

the two minor sons. The prayer was allowed and Rajaram Jaipuria was appointed guardian ad litem for the purpose of proceedings which were

pending before P.C. Mullik, J. It may also be mentioned in this connection that Rajaram Jaipuria also represented the two minor sons in the

proceedings before the Supreme Court.

49. One Gurdeo Khemani, who is the brother of the first wife of Mungturam Jaipuria (the father of Rajaram) suddenly appeared on the scene after

the order of the Supreme Court was passed, extending the time within which the arbitrator should make and publish his award. The allegations

made by the said Khemani through a petition filed in the Kanpur Court that the interest of Rajaram was adverse to that of the minor sons. Rajaram

acted strangely in that proceeding and pleaded guilty to the allegations made by the said Gurdeo Khemani. Masud, J. held that Gurdeo Khenami

was a front man of Mangturam''s group who was obviously set up to frustrate the arbitration proceedings.

50. Bhaskar Gupta, appearaing on behalf of the appellant has drawn our attention to the curious fact that the minor sons of Rajaram were

represented in this court by the same Solicitor and counsel, contending that their interest is adverse to that of Rajaram.

51. It was further contended that the disputes relating to certain deposits in the partnership firm were not in existence as the question of deposits

not having been referred to arbitration, the Arbitrator had no jurisdiction to adjudicate upon this issue.

52. The arbitration agreement is in the widest possible term. All the disputes between the parties have been referred to arbitration. The deposits

formed part of the liability of the firm Anandram Gajadhar. The entire dispute relating to the partnership business had been referred to the

arbitrator. It has also been contended by Mr. Tibrewal that the arbitrator has not only taken into account the actual sums of money that were in

deposits but also the claim of interest for all these deposits. It was submitted by Mr. Gupta that on this aspect of the matter, no dispute was even

raised before the arbitrator. It was never argued before the arbitrator that the Arbitrator''s jurisdiction was of very limited nature and the questions

relating to acquisition of the shares and/or deposits could not be gone into by the Arbitrator. We are of the view that Mr. Gupta''s arguments are of

substance and must be upheld.

53. It appears to us that Mangturam and his group having induced the appellant to withdraw four suits that were filed, started trying to stall the

arbitration proceedings on various grounds in various courts. In fact, Masud, J. took serious note of the tactics adopted by the respondents and

found them guilty of abusing the process of the court, which amounted to contempt of court. Full opportunity was given to all the parties to disclose

documents on which they wanted to rely. Without availing of this opportunity, the" respondents, in the last two days of the arbitration sittings,

prayed before the Arbitrators for leave to apply before the court to issue subpoena to produce the documents. The arbitrator in his wisdom did not

allow this prayer. There is no question of denial of natural justice. In a case like this, the respondents had as much opportunity of representing their

case and producing their documents as the appellants. If the respondents decided not to avail of the opportunity, then they cannot turn round and

say that injustice was done to them. Moreover, it appears that the prayer for issuance of subpoena by court or referring the matter to court was

done with full knowledge of the fact that the arbitration proceeding was going to be completed within the time prescribed by the Supreme Court.

There has been no reasonable explanation by Mangturam group. In the case of M/s. Kapoor Nilckheri Coop Diary Farm Society vs. Union of

India 1973(1) SC 708, the Supreme Court rejected the similar contention that the arbitrator has misconducted by not allowing certain documents

to be tendered in evidence in support of a claim. The Supreme Court relied on the following passage in Russel on Arbitration, 17th Edn. p. 182 :

Objection to a decision of the arbitrator as to whether or not to admit evidence may be waived like other objections to the manner in which the

proceedings are conducted a part of an arbitration cannot be allowed to allow lie by and then, if the award is unfavourable he would seek to set it

aside on the ground that the arbitrator gave a ruling on the decision contrary to the rule of evidence which the parties during the proceedings took

no steps to question. Reference may be made to another passage in Russel on arbitration appearing at page - 230"" 18th Edition which reads.....

The Court will not permit the party to lie by or to act in indecisive manner so as to obtain the benefit of the award if it is in his favour and

endeavour to set it aside if it is not.

54. The facts that have been brought on record go to show that the respondents Mangturam group was not interested in justice being done. They

were out to frustrate the arbitration proceeding. Mangturam Jaipuria was a senior and most influential member of the Jaipuria family. There was a

death in the family. It was Mangturam, who during the period of mourning had suggested that all the disputes and differences between the parties

should be settled by arbitration. The suits that were filed on behalf of the appellant group were withdrawn to implement the suggestion of

Mangturam, Jaipuria. The appellants sincerely wanted to settle all the disputes through arbitration. Thereafter the parties themselves chose a

wellknown, member of the Birla Family, who was also well known to the Jaipuria family, as the Sole Arbitrator. The Arbitration Agreement was

entered into on or about 13th March, 1961. The Arbitration agreement was made a part of the petition that was filed before the court for

withdrawal of the four suits. The material part of the said agreement has already been set out in the earlier part of the judgment. The agreement was

couched in the widest possible language so as to include all possible claims of the parties against eact other. This obviously was done to bring to an

end to all the disputes once for all. But even after entering into this Arbitration Agreement on March, 1961 Mangturam tried his best to frustrate the

arbitration proceedings by raising various technical pleas. After a number of legal proceedings, B.M. Birla was successful in his effort to hear out

the case and ultimately passed his Award on May 25, 1967.

55. In the case of U.P. Hotels and Others Vs. U.P. State Electricity Board, the Supreme Court held that even assuming that there was an error of

construction of the agreement or even that there was an error of law in arriving at a conclusion such an error is not an error which is amenabale to

correction even in a reasonable award under the law. In order to set aside an award there must be wrong proposition of law laid down in the

award as the basis of the award. It was further held in that case that the view taken by the Umpire on S. 49 was a possible view in the light of the

decision of the Supreme Court. In the premises a question of law arose certainly during the course of the proceedings. Such a question has been

decided by the Umpire on a view which was a possible one to take. Even if there was no specific reference of a question of law referred to the

Umpire, there was a question of law involved. Even on the assumption that such a view was not right the Award was not amenable to interference

or correction by the Courts of law as there was proposition of law which could be said to be the basis of the award of the Umpire and which was

erroneous.

56. The Supreme Court once again emphasised the limited nature of the Court''s jurisdiction in an Arbitration matter in the case of Food

Corporation of India vs. Joginderpal Mohinderpal & Another, reported in AIR 1989 SC 263. It was observed by Sabyasachi Mukherji, J. (as His

Lordship then was) that an Arbitrator''s award may be set aside for error of law appearing on the face of it. Though this jurisdiction is not to be

highly exercised. The award can also be set aside if inter alia the Arbitrator has misconducted himself or the proceedings. It is difficult to give an

exhaustive definition as to what may amount to a misconduct on the part of the arbitrator. It is not misconduct'' on the part of an arbitrator to come

to an erroneous decision whether his error is one of fact or law and whether or not his findings of fact are supported by evidence.

57. It was also held in that case that the court should not sit in appeal over the views of the Arbitrator by re-examining and re-assessing the

materials. The Arbitrator had construed the effect of a particular clause of the contract. It cannot be said that such a construction on is a

construction which is not conceivable or possible. If that is the position, assuming even for the argument that there was some mistake in the

construction, such a mistake is not amenable to be corrected in respect of the Award by the Court. The order of the arbitrator was a fair order

after considering all the records and the conclusion arrived at by him is a plausible conclusion and therefore the Court has no jurisdiction to

interfere or modify the award.

58. In the instant case also it appears to use that the arbitrator had considered all aspects of the matter. In the award he recorded the facts that he

considered. The order has not been shown to be unfair or unreasonable in any way. Various business of Jaipuria Group including Swadeshi Cotton

Mills, had been given to Mangturam Group. The other parties have been given moneys in lieu of their shares. This Award, if implemented, will

allow the business of Jaipuria group to be carried on without any friction and fight and those, who have been excluded from the business, will have

monetary compensation.

59. The Supreme Court in the case of Dandasi Sahu Vs. State of Orissa, observed:

The Arbitrator in the case of a reference to him in pursuance of an arbitration agreement between the parties a person chosen by parties is

constituted as the sole final judge of ail the questions and the parties bind themselves as a rule to accept the award as final and conclusive. The

award could be interfered with only in limited circumstances as provided under Sections 16 and 30 of the Arbitration Act. In this situation the

award has to-be tested with circumspection. Even with all the limitations on the powers of Court and probably because of these limitations, it could

be held that if the amount awarded was disproportionately high having regard to the original claim made and the totality of the circumstances it

would certainly be a case where the arbitrator could be said to have not applied his mind amounting to legal misconduct. It may be seen that in this

case in the original claim made before the Arbitrator the value of the work not paid was stated as Rs. 3,87,796/-. The supplemental claim made

before the arbitrator amounted to Rs. 8,27,857/-. Thus the total value of the work not paid according to the appellant, was Rs. 12,15,653/-. As

against this claim the arbitrator has awarded as lump sum of Rs. 25,00,156/-. The arbitrator also awarded interest for period upto the date of

submission of claim and for the period during which the dispute was pending before the arbitrator which he could not do prior to commencement

or Interest Act, 1978. In the instant case even after the exclusion of the interest amount from the award the amount was disproportionate.

60. But in that case before the Supreme Court it was possible to demonstrate that the Award was disproportionately higher than the claim that was

made. But in this case the claim included interest. If that is taken into account, it does not appear that any disproportionately high award has been

made.

61. It has been contended by Mr. Tibrawal on behalf of the respondents that the arbitrator exceeded his jurisdiction by dealing with the claim for

deposits and deciding the disputes relating to the shares of Swadeshi Cotton Mills. Prior to entering into the deposits. The amount that was

awarded was more than the amount claimed and the rate of interest was also higher than the rate claimed. Before entering into the arbitration

agreement the dispute was that the shares of Swadeshi were sold at an under-value. It was nobody''s case that the said shares belonged to

Anandaram Gajadhar.

62. we are unable to uphold this contention because of the wide nature of the Reference and the dispute referred to. Moreover, the Award does

not specifically refer to any claim which was not included in the Reference that was made before the Arbitration. The Arbitrator had considered the

matter of shares and interest and directed Mangturam group to pay certain sums of moneys to the others. This Award may have a far-reaching

consequence, but the Award really deals with the disputes that were raised by and between the parties. Apart from the cases referred hereinabove

a large number of cases were also relied upon by both sides. In view of clear exposition of law by the supreme Court in the cases noted

hereinabove, it is not necessary to refer to any other case. It appears to us the principal points on which the judgment was given in the Court below

were wrongly decided. In that view of the matter the Appeal is allowed. There will be a judgment in terms of the award. The appellant will be

entitled to costs of this appeal. Such costs will be paid by the respondent nos. 5, 2(A), 7, 3(i), 3(ii) and 4.

Mr. Tibrawal prays for stay of operation of this order. Stay is granted till 22nd of October, 1990.

Bhagabati Prasad Banerjee, J.

I agree.