



2025:KER:97714

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 17TH DAY OF DECEMBER 2025/26TH AGRAHAYANA, 1947

ARB.A NO.2 OF 2023

ARISING OUT OF THE ORDER DATED 03.09.2022 IN OP (ARB)
NO.35/2021 OF COMMERCIAL COURT, KOLLAM

APPELLANTS/PETITIONERS IN THE OP/RESPONDENTS 1 TO 4 & 6 TO
11 IN ARC & LRS OF DECEASED 12TH RESPONDENT IN ARC:

- 1 LAZAR CHAKKOLA
AGED 51 YEARS
S/O.GEORGE CHACKOLA, MISSION QUARTERS,
FATHIMA NAGAR, TRISSUR-5, PIN - 680005
- 2 KOMALAVALLI
AGED 60 YEARS
W/O.NARAYANAN KUTTY,
GEETHA NIVAS, AMBAL, VALIYAKUNNU P.O.,
VALANCHERRY, MALAPPURAM DISTRICT, PIN - 676552
- 3 ARAVINDAKSHAN M.
AGED 65 YEARS
S/O.KESAVAN NAIR, MALAYATIL HOUSE, ADHAVANAD,
MALAPPURAM DISTRICT., PIN - 676301
- 4 VIJAYAN K.
AGED 67 YEARS
S/O.PADMANABHAN NAIR, LEKSHMI, PARAMBILANGADI,
KOTTAKKAL, MALAPPURAM DISTRICT, PIN - 676503
- 5 LIJO CHACKOLA
AGED 47 YEARS
S/O.GEORGE CHACKOLA, CHAKOLA HOUSE, MISSION
QUARTERS, FATHIMA NAGAR, THRISSUR, PIN - 680005



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- 6 T.M.SETHUMADHAVAN
AGED 73 YEARS
S/O.BALAKRISHNAN NAIR, MAVANCHERRY HOUSE,
THANNUR,MALAPPURAM DISTRICT, PIN - 676302
- 7 MOIDEEN P.
AGED 63 YEARS
S/O.KUNHI MOIDEEN , PUNNAKKODAN HOUSE,
PALACHIRAMAD,PERUMANNA, EDARIKODE P.O.,
MALAPPURAM DISTRICT, PIN - 676501

PETITIONER NO.8 IN OP (ARB) NO.35/2021,
M.JANARDHANAN DIED ON 24.03.2019
- 8 SHIBU.K
AGED 46 YEARS
S/O KRISHNAN CHETTIAR, THILAK LIONS NAGAR,
KOLLAM, PIN - 691001
- 9 PUSHPAVALLY B.
AGED 70 YEARS
W/O.K.NANDANAN, 'ANJALI',
THATTAMALA P.O., KOLLAM, PIN - 691010
- 10 BINU JOSE
AGED 51 YEARS
S/O JOSE MATHEW, MANAKKATU HOUSE,
PALA P.O., PIN - 688978
- 11 K.VASANTHA KUMARI
AGED 66 YEARS
W/O.JANARDHANAN, MALAYATTIL HOUSE,
ATHAVANAD P.O., VIA. THIRUVANAYA,
MALAPPURAM DISTRICT, PIN - 676301
- 12 K.VIJESH KALLANGAT
AGED 41 YEARS
S/O JANARDHANAN, MALAYATTIL HOUSE, ATHAVANAD P.O.,
VIA.THIRUVANAYA, MALAPPURAM DISTRICT, PIN - 676301
- 13 JITHESH KALLANGAT
AGED 38 YEARS
S/O JANARDHANAN, MALAYATTIL HOUSE,
ATHAVANAD P.O., VIA. THIRUVANAYA,
MALAPPURAM DISTRICT, PIN - 676301



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14 DIVYA.M
AGED 35 YEARS
D/O.JANARDHANAN, MALAYATTIL HOUSE, ATHAVANAD P.O.,
VIA. THIRUVANAYA, MALAPPURAM DISTRICT - 676301

PETITIONER NO.8 DIED. LEGAL HEIRS OF THE 8TH
PETITIONER WERE IMPEADED AS ADDITIONAL
PETITIONERS 11 TO 14 BY THE COURT BELOW IN
OP(ARBITRATION) AS PER ORDER DATED 15.12.2021
PASSED IN IA NO.1445/19 IN OP (ARBITRATION)

BY ADVS.
SMT.SHILPA SATHISH
SRI.A.SUDHI VASUDEVAN (SR.)
SRI.JOSE JONES JOSEPH
SRI.ADITH KIRAN R.S.
MARTEENA MILAN

RESPONDENTS/RESPONDENTS IN OP/CLAIMANT & 5TH RESPONDENT IN
ARC:

1 SUDARSANAN PILLAI.G
AGED 63 YEARS
S/O GOPALAN PILLAI, AMMACHI VEEDU,
KAIKULANGARA WARD, KOLLAM, PIN - 691012

2 SUDHAKARAN.K
AGED 55 YEARS
S/O PADHMANABHAN NAIR, VIKKATH HOUSE,
INDIANNORE POST, KOTTAKKAL,
MALAPPURAM, PIN: 676503

BY ADVS.
SRI.MILLU DANDAPANI
SRI.MATHEW KURIAKOSE
SMT.SUMATHI DANDAPANI

THIS ARBITRATION APPEAL HAVING BEEN FINALLY HEARD ON
13.11.2025, THE COURT ON 17.12.2025 DELIVERED THE FOLLOWING:



JUDGMENT

Dated this the 17th day of December, 2025

Syam Kumar V.M.,J.

This Appeal is filed challenging the order dated 03 September 2022 in O.P. (Arb) No.35 of 2021 of the Principal Sub Court/Commercial Court, Kollam. The said O.P. was filed challenging the arbitration award dated 30 March 2017 of the learned Arbitrator in ARC No.7 of 2014, whereby the claim preferred by the 1st Respondent claimant was allowed in part.

2. Appellants herein were the petitioners in the said OP (Arb). They were Respondents 1 to 4 and 6 to 11 and legal representatives of the deceased Respondent No.12 in the ARC before the Arbitrator. Respondents were the Respondents in the O.P. and the claimant and Respondent No.5, respectively, in the ARC.

3. The subject matter of the dispute is a partnership arrangement formed to run a hotel/restaurant and a bar by the name and style 'Hotel Alakananda' at Kollam. The claimant started the hotel in a building erected on his 21.5 cent parcel of land. FL 3 licence to run the bar stood in the name of the claimant and was obtained by him in the year



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1992. The hotel fell into financial doldrums, and to augment the resources as well as to meet the outstanding liabilities with creditors, including the Kerala Financial Corporation (KFC), the claimant, along with his wife entered into a partnership arrangement as evidenced by a partnership deed dated 01 April 1993. The deed envisaged that the capital of the firm was to be equally contributed by the partners as and when required in equal proportions, and all the assets and liabilities of the business conducted so far by the claimant was taken over by the firm thus created. After execution of the said partnership deed, two sale deeds were registered whereby the claimant and his wife, after retaining 2 of the total 15 shares, transferred the rest to the vendees who were partners of the firm. The consideration for such sale was stated in the sale deeds as to have been partly paid and the rest retained by the vendees for meeting the liabilities of the firm, including that with the Kerala Financial Corporation (KFC). The partnership underwent multiple reconstitutions during which the claimant's wife and certain other partners retired from the firm, and new persons got admitted into the partnership.

4. Suffice to say that after around 18 years of running of the partnership, which witnessed ups in the form of purchase of adjacent land



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to meet the parking needs of the hotel, and downs like FL3 licence getting cancelled and ensuing litigations right up to the Apex Court for reviving the same, disagreements broke out between the partners. While the claimant asserted that the other partners had failed in their obligation to meet the liabilities of the firm, including debts owed to the KFC, the rest of the partners alleged that the claimant wanted to elbow them out once the firm became profitable due to their efforts in reviving the FL3 licence. This dispute between the partners led to the invocation of the arbitration clause and appointment of an Arbitrator by this Court, who was in the course of the proceedings, substituted.

5. Before the Arbitrator, the claimant had filed a claim statement *inter alia* seeking to dissolve the partnership by declaring the same as non-existing and void from its inception. He contended that the partnership was entered into under undue influence, coercion, fraud and misrepresentation. Later, in the course of the proceedings, he confined his said challenge to the ground of fraud. The claimant had also sought a prayer to declare the two registered sale deeds executed by him with the other partners concerning properties described in Schedule No.1 to the claim statement, as null, void and as not affecting his title over the relevant



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property covered by the said deeds. Further a declaration was also sought with respect to a third sale deed relating to property described in Schedule item No.2 which was the parking lot. A prayer for settling the accounts of the firm and consequential reliefs was also sought in the claim statement.

6. The Arbitrator drew up issues, and parties proceeded to tender evidence. CW1 was examined on the side of the claimant and Exhibits A1 to A 56 were marked from his side. From the side of the Respondent, RW1 and RW2 were examined and Exhibits B1 to B 46 were marked.

7. The learned Arbitrator, after due hearing, allowed the claim in part vide award dated 30 March 2017. The partnership business was declared dissolved. The partnership deed, as well as two sale deeds, were declared void and not affecting the title of the claimant over the relevant properties. The claim with respect to the third sale deed, the parking lot later purchased by the firm, was found against the claimant. The award then proceeded to settle the accounts of the partnership and the value of the fixed asset of the firm at the time of dissolution was determined. Claimant was directed to effect certain payments and the modalities for disbursement were also laid out in the award.



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8. Aggrieved by the said award, the Respondents in the ARC challenged the same before the Commercial Court, Kollam under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act of 1996”). The Commercial Court, after hearing the parties, dismissed the said petition. Aggrieved by such dismissal, the Respondents have preferred this Appeal invoking Section 37 of the Act of 1996.

9. Heard Sri.A.Sudhi Vasudevan, Senior Advocate, instructed by Marteena Milan, Advocate for the Appellants and Smt. Sumathi Dandapani, Senior Advocate, instructed by Mathew Kuriakose, Advocate for the Respondents

10. The contentions of the Appellants (Respondents in the ARC) in brief are as follows:

11. The order of the Commercial Court dismissing the challenge to the award under Section 34 of the Act of 1996 is erroneous and unsustainable. The Arbitrator and the Commercial Court had failed to appreciate that the dispute was non-arbitrable and that the claims were hopelessly barred by limitation. The Commercial Court erred in holding that the plea of non-arbitrability was barred under Section 16(2), overlooking that specific objections on arbitrability had been raised both



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before the Arbitrator and in Section 34 petition.

12. The Arbitrator as well as the Commercial Court failed to discern that the challenge raised was regarding arbitrability, and not with respect to jurisdiction. A challenge to arbitrability could be validly raised under Section 34(2)(b)(i), as laid down in **Lion Engineering Consultants v. State of Madhya Pradesh and others** [(2018) 16 SCC 758]. It is further contended that the claim seeking to declare the relevant registered sale deeds as void was non-arbitrable under the principles laid down in **Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. and others** [(2011) 5 SCC 532]. Consequently, the Arbitrator committed a patent illegality in treating properties covered under registered deeds as firm assets and in issuing consequential directions and the Commercial Court erred in not setting aside the same in Section 34 challenge.

13. It is further submitted on behalf of the Appellants that the course open to the claimant was to invoke statutory civil remedies under Section 31 of the Specific Relief Act, 1963 as only the civil courts possess the jurisdiction to invalidate registered deeds. The arbitration proceedings, it is submitted, were also unsustainable for non-joinder of necessary parties, including a transferee (who was not a signatory to the arbitration



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agreement), the Registrar of the Sub-Registrar Office, and even the claimant's wife, who was an original partner.

14. The said parties/ persons had not been arrayed as parties to the arbitration, and the consequence thereof was that the proceedings stood vitiated. This is even more so since the Arbitrator had chosen to declare the partnership deed void for fraud and set aside the sale deeds for lack of consideration. It is submitted that there could not have been an arbitration of disputes affecting third-party rights, as in rem rights were involved. Reliance is placed in this respect on the dictum in **Unique Alliance Industries v. Anupama Agencies and another** [1994 SCC OnLine Ker 85].

15. The next contention put forth is that the claim was barred by limitation under Article 58 of the Limitation Act, as the deeds dated 1995, 1998 and 2002 were challenged after nearly two decades. The claimant, it is submitted, had failed to include a clause explaining the commencement of the cause of action, which is integral to any plaint and claim statement. This had effectively prevented the opposite parties as well as the Arbitrator from making a proper computation of limitation. The purported explanation offered for the delayed filing, that the claimant's



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wife was laid up, was neither substantiated nor was it legally tenable. Reliance is placed in this respect on the dictum in **Kunhi Mohammed and another v. M/s.Sreeram Transport Finance Co. Ltd.** [2017 (5) KHC 411 (DB)].

16. The Commercial Court overlooked that aspect that if the partnership deed was indeed void for fraud as found by the learned Arbitrator, then the arbitration clause contained therein, based on which the arbitration was conducted, would also be rendered inoperative, impacting the arbitration proceedings detrimentally. The conduct of the claimant by participating in the partnership arrangement for a long period of 18 to 19 years, permitting and participating in multiple reconstitutions of the partnership, which included the entry and exit of his wife in the partnership arrangement, the issuance of notice of termination etc., very evidently negated any allegation of fraud. The Arbitrator, as well as the Commercial Court, overlooked the said aspect.

17. It is submitted that the Arbitrator as well as the Commercial Court had overlooked the settled legal position that a dispute over properties covered by the sale deeds was not arbitrable since sale deeds registered documents enjoy statutory presumptions of validity. Not only



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were they beyond the subject matter of arbitration, but the claimant had also failed to rebut the statutory presumption. Consequently, the Arbitrator's findings on ownership and transfer of title are legally unsustainable.

18. With respect to consideration, the finding arrived at by the Arbitrator that no consideration had moved for the partnership as well as for the sale deeds was contrary to the evidence available. Pointing to the recitals in the registered deeds which expressly acknowledged payment of part consideration and a mechanism for future payment, and the admission of the claimant that substantial liabilities of the partnership, including dues to the Kerala Finance Corporation, had been discharged from partnership funds, it is contended that the same revealed the contributions by all partners, including the Respondents. Thus, the conclusion arrived at by the Arbitrator that no consideration passed was contrary to the material on record. Reliance is placed on the dictum in **Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) - Dead through LRs and others** [(2020) 7 SCC 366] and **Munshi Ram v. Municipal Committee** [1979 KLT OnLine 1131 (SC)] to buttress this contention. It is submitted that since the Arbitrator himself had directed that the



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claimant should pay amounts as part of the settlement of accounts, the finding regarding lack of consideration reveals an inconsistent and erroneous stand on the part of the Arbitrator.

19. The learned Senior Counsel for the Appellants thus contended that the award suffers from patent illegality, contravenes the fundamental policy of Indian law, is against public policy, and violates basic notions of justice and morality. The Commercial Court had erred in overlooking the above. The award ought to have been set aside under Section 34 of the Act of 1996. It is thus prayed that the Appeal is fit to be allowed.

20. Per contra, the learned Senior Counsel appearing for the Respondent (Claimant) submitted that the order of the Commercial Court and the award of the Arbitrator do not warrant any interference. The contentions put forth in this respect, in brief, are as follows:

21. The Commercial Court had dismissed the OP (Arb), noting that none of the grounds raised therein to challenge the award fell within the ambit of Section 34 of the Act of 1996. The same is true with the Appeal filed under Section 37 of the Act.

22. The contention that the subject matter lacked 'arbitrability', it



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is submitted, is an issue touching on the Arbitrator's competence and jurisdiction. The same had been raised, heard, and conclusively determined as a preliminary issue by the first Arbitrator in favour of the claimant. The said finding of the Arbitrator was never challenged in Section 34 petition before the Commercial Court. The same cannot be raised in the Appeal for the first time. The objection based on limitation is equally unsustainable, as both the Arbitrator and the Commercial Court had considered and rejected it with valid reasoning. The same could not be re-agitated in an Appeal under Section 37 Appeal.

23. The contentions put forth based on rights *in rem* being affected are unsustainable since no rights of third parties are involved in relation to the properties covered under Exhibits A6 and A7. The release deeds executed by outgoing partners transferred rights only to the continuing partners. The said aspect had been duly noted by the learned Arbitrator. Hence, the argument regarding rights *in rem* is untenable. It is submitted that the Act of 1996 does not specifically exclude any class of disputes from being the subject matter of arbitration. Further, it is trite that disputes concerning subordinate rights *in personam* arising from rights *in rem* are arbitrable. Reliance is placed on the dictum in **Booz Allen**



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(supra), **Vidya Drolia and others v. Durga Trading Corporation** [(2021) 2 SCC 1], and other binding precedents to support this contention. The conclusion arrived at by the Commercial Court, that jurisdictional objections cannot be raised at Section 34 stage, is settled. Reliance is placed on the dictum in **Madhya Pradesh Rural Road Development Authority and another v. LG Chaudhary Engineers & Contractors** [(2018) 10 SCC 826], **Sweta Construction v. Chhattisgarh State Power Generation Company Limited** [(2024) 4 SCC 722] and **Gayatri Project Limited v. Madhya Pradesh Road Development Corporation Ltd.** [(2025) SCC OnLine SC 1136].

24. The contention that the claim statement was bad for misjoinder as well as non-joinder of parties had been turned down by the Arbitrator, stating valid reasons. The inclusion of Sri. Janardhanan, who purchased the 7th appellant's share, was valid under Section 35 of the Act of 1996, and the exclusion of the claimant's wife was proper since she had earlier retired from the partnership and had already executed a release deed. Thus, there had been no misjoinder or non-joinder as alleged. The law regarding the addition of non-signatories to arbitration proceedings is well-settled. Reliance is based on the dictum in **ASF Buildtech Pvt. Ltd.**



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v. Shapoorji Pallonji and Company Private Ltd. [(2025) 9 SCC 76], **Cheran Properties Ltd. v. Kasturi & Sons Ltd. and others** [(2018) 16 SCC 413], **Chloro Controls India Private Limited v. Severn Trent Water Purification Inc. and others** [(2013) 1 SCC 641] and **Indowind Energy Ltd. v. Wescare (India) Ltd. and another** [(2010) 5 SCC 306] in this respect.

25. The challenge raised against the dissolution of the partnership by the Arbitrator is also unsustainable. The said conclusion had been arrived at by the Arbitrator after scrutinising and finding that the partnership under Exhibit A5 was vitiated by fraud and lack of consideration. That the rights under an FL-3 licence, which are non-transferable under the relevant Abkari Rules, had also been an object of consideration, affirmed the said finding of the Arbitrator that Exhibit A5 is unsustainable and void. The said finding does not merit interference under Section 34 or Section 37 of the Act of 1996.

26. The factual finding, by the Arbitrator, based on evidence, that Exhibits A6 and A7 sale deeds were internal arrangements among the partners rather than genuine sale deeds, does not merit interference under Section 34 nor under Section 37. The Arbitrator's conclusions on want of



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consideration had been arrived at after due appreciation of evidence tendered, unaffected by Sections 91 and 92 of the Evidence Act. The Arbitrator had also taken note of the contradictions in the testimony of RW1 and RW2 regarding consideration payments while arriving at the said conclusion. Reliance is placed on the judgments in **Matthew v. Lakshmanan** (1990 (2) KLT 446) and **Vasu v. Parukuttyamma** [2012 (1) KLT 466] in this respect.

27. It is submitted that the contention that the Arbitrator had no power to dissolve the partnership, as had been done in the impugned award, is not sustainable. Where there is a clause in the articles of partnership or agreement or order referring all matters in difference between the partners to arbitration, as it has been specifically stated in the partnership deed between the parties to the case at hand, the Arbitrator has the power to decide whether or not the partnership shall be dissolved and to order its dissolution. Reliance is placed in this respect on the dictum laid down in **V.H.Patel & Co. and others v. Hirubhai Himabhai Patel and others** [(2000) 4 SCC 368].

28. It is trite that merely showing that another reasonable interpretation is possible based on materials on record has been held to be



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insufficient to justify an interference by the court. Reliance is placed on the dictum laid down in **UHL Power Company Ltd. v. State of Himachal Pradesh** [(2022) 4 SCC 116]; **State of Kerala and Another v. S. Gopalakrishna Pillai** [2021 (6) KHC 735]; **Lloyed Insulations (India) Ltd. v. Foremexx Space Frames** [2022 KHC Online 55].

29. The FL 3 licence stood all along in the name of the claimant. By operation of law such a license is not transferable. Neither the respondents nor the partnership acquired any rights under the same. The exclusive privilege to deal in liquor covered by the license issued by the competent authorities could not have been transferred, and any such transfer would be hit by the relevant provisions of the Kerala Abkari Rules. Reliance is placed on the dictum of the Full Bench of this Court in **Narayanan & Co. v. Commissioner of Income Tax** [1996 (1) KLT 546 (FB)].

30. As regards the capital contributions, the conclusion arrived at by the Arbitrator that the same could at the most be ₹25,000/- for each partner and ₹50,000/- for the claimant is a conclusion based on evidence available. The said finding does not violate any fundamental policy of Indian law. The Arbitrator had also correctly found that the Respondents



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therein had not discharged the partnership liabilities under Exhibit A5. These aspects had been meticulously considered in Section 34 petition, and all grounds of challenge had been rightly concluded as not falling within the ambit of the said provision. It is thus contended by the learned Senior Counsel that, given the very narrow scope for interference under Section 37, and since no 'patent illegality' or legal error could be pointed out, the Appeal is liable to be dismissed.

31. We have heard both sides in detail and have considered the contentions put forth.

32. Before examining the comparative merits of the contentions advanced, it is pertinent to note certain incontrovertible aspects that emerge from the award and from the respective contentions of the parties. Both sides submit in unison that they do not seek to disturb the finding in the Award regarding the dissolution of the partnership. It is admitted that the FL3 licence to run the bar no longer subsists, and the commercial enterprise run by the partnership has thus lost its sheen. The running of the hotel cum bar by the partnership thus being out of question, the appellants' interest in contesting the matter boils down to the question of affirming a titular interest in the properties covered by Exhibit A6 and



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A7 deeds. The scope of the appeal thus being confined to the narrow sphere of ownership rights over the relevant properties covered by A6 and A7, the conclusions arrived at by the Arbitrator regarding the nature and scope of Exhibits A6 and A7 sale deeds assume importance.

33. In the award, the Arbitrator has, after a detailed appreciation of evidence, unequivocally concluded that Exts. A6 and A7 sale deeds were never intended nor envisaged to transfer any title or interest in the property covered by the said deeds. The Award finds that the said sale deeds were entered into only as paper agreements for the limited purpose of acting as security for the amounts that the appellants had contributed towards augmenting the resources of the partnership. It thus stands concluded by the Arbitrator upon the facts that Exhibits A6 and A7 deeds were nothing, but shadow agreements to augment the partnership arrangement. Issue Nos.7 and 8 drawn by the Arbitrator concerning the validity of Exhibits A6 and A7 sale deeds, stand answered holding that the deeds are not supported by any consideration. The Award concludes that, since there is no supporting oral evidence to substantiate as to who paid the consideration under Exhibits A6 and A7, when it was paid or what amount was paid, the said deeds are null and void. The said finding



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arrived at by the Arbitrator on appreciation of facts and evidence tendered before him is bound to have an impact on the sustainability of some of the contentions put forth by the appellants.

34. In the light of the factual finding by the Arbitrator that the sale deeds were not arrangements for sale and were in reality only paper agreements for security, it follows that the same are only inter parte arrangements which do not go beyond the realm of relationship between the partners. Since the sale deeds thus stand as auxiliary to the partnership agreement and devoid of the character of conveyance transferring title, they do not alter the legal relationship inter se the partners or create any independent or enforceable rights in rem. It follows therefrom that the contentions put forth by the appellants regarding the sale deeds being documents affecting rights *in rem* and the question of claim being barred by limitation do not arise. The possibility of raising such legal contentions stands erased by the unequivocal finding of the Arbitrator in the award that Exhibits A6 and A7 are not documents transferring titular rights of the property and are only an inter se arrangement by a group of businessmen to secure the business capital advanced.

35. It is also relevant to take note of the scope and jurisdiction



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exercised under Section 37 of the Act of 1996 while considering this Appeal. The Hon'ble Supreme Court in **Punjab State Civil Supplies Corporation Limited and another v. Sanman Rice Mills and others** [2024 SCC OnLine SC 2632] has pithily stated legal position on the point as follows:

“The scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.” Emphasis added)

It thus follows that court interventions under Section 37 of the Act of 1996 is permitted only within the confines of Section 34 and the scope of



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this Appeal is limited to examining whether the Commercial Court, while dismissing the petition under Section 34 had exceeded, failed to exercise or otherwise misapplied its jurisdiction.

36. Having thus reminded ourselves of the contours of the jurisdiction that we exercise under Section 37, we proceed to consider the contentions put forth by both sides as follows.

37. It is the contention of the learned Senior Counsel that the question of ‘arbitrability’ had been overlooked by the Arbitrator as well as the Commercial Court and that the award as well as the order in the petition filed under Section 34, are fit to be interfered with on the said ground. Reliance is placed on Section 34 (2) (b) (i) of the Act of 1996, and it is submitted that the subject matter of the dispute was not capable of settlement by arbitration insofar as the prayer related to property rights, which were rights *in rem* that affected the third parties as well as the world at large. It is contended that such disputes could only have been decided by a Civil Court in appropriate proceedings initiated under Section 31 of the Specific Relief Act, 1963, challenging the validity of the registered sale deeds. Civil Courts had the exclusive jurisdiction to grant declaratory decree under Section 31 and arbitration could not have been



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invoked for invalidating a registered sale deed. The learned Senior Counsel would thus contend that though a preliminary issue of jurisdiction had been considered and decided, the same only related to 'jurisdiction' and never touched on the question of 'arbitrability'. The latter question, according to the learned Senior Counsel, could be raised even during the Section 34 proceedings. The Arbitrator as well as the Commercial Court overlooked the said aspect.

38. The above contention, though attractive at first glance, upon closer scrutiny cannot be accepted for the reason that the learned Arbitrator had upon an appreciation of evidence concluded that the dispute between the parties arose out of the partnership agreement and the sale deeds executed between the parties. The said legal arrangements entered into by the parties have been concluded by the Arbitrator to be an *inter partes* arrangement which does not create any rights on parties beyond the said agreement and sale deeds. It has been the finding of the Arbitrator in the award that the transfer of property per various sale deeds and release deeds had been confined to the partners to the firm, and even the lone instances where third parties acquired an interest had been taken care of by adding them to the party array of the arbitration proceedings.



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39. Once the Arbitrator after considering the documentary evidence placed on record, as well as the depositions, concludes that the dispute between the parties arises exclusively from the contractual arrangement which includes the partnership agreement and the sale deeds executed inter se, the question of arbitrability on the premise that in rem rights are involved thus taking the matter out of the ambit of the Arbitrator does not arise. The Arbitrator has unequivocally concluded that the dispute between the parties in the arbitral proceedings is purely *inter partes* and are confined to the partnership deed and the sale deeds between them. In view of the said position conclusively arrived at by the Arbitrator, which is not open to scrutiny under Section 34 of the Act of 1996, the contention that the subject matter is not arbitrable cannot be sustained.

40. The next contention that was strenuously pursued concerned the question of limitation. It is contended that the Commercial Court as well as the Arbitrator failed to note that the subject matter was hopelessly barred by limitation. The claim, according to the learned counsel, was raised beyond the period of 3 years prescribed under Article 58 of the Limitation Act and as per Section 21 of the Act of 1996, the limitation



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starts to run from the receipt of the request for arbitration. The claim statement did not even include an averment explaining the commencement of the cause of action, which ought to have been mandatorily included in every plaint/claim statement. Thus calculation of the limitation period was deliberately made impossible. The claim being hopelessly barred by limitation, according to the learned counsel, the award rendered was fit to be interfered with on the said ground itself. The Commercial Court, however, overlooked the same.

41. The above contention raised regarding limitation is unsustainable insofar as the same has been considered in detail by the Arbitrator and the Commercial Court and validly rejected by both. The Commercial Court has, in the impugned order, concluded that it is the specific finding of the Arbitrator that the relevant documents were unsupported by consideration and were hence set aside as void, thus rendering the question of limitation inconsequential. Further, the arbitration proceedings had been initiated pursuant to the appointment of the Arbitrator by this Court in an Arbitration Request and the question of limitation, which is open to be taken at the stage of appointing an Arbitrator under Section 11 of the Act of 1996, had not been taken.



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Neither party had challenged the order of this Court appointing the Arbitrator and had participated in the arbitration process without demur. Hence, the contention put forth regarding limitation at the stage of Section 34 petition and in this Appeal is unsustainable.

42. Once the Arbitrator, after due consideration of the contentions put forth by both sides, concluded that the bar of limitation is not attracted in the facts and circumstances of the case at hand, then the said question cannot be open to further scrutiny by the Commercial Court under Section 34 of the Act nor by this Court in an Appeal under Section 37. The contentions put forth based on limitation are thus not tenable.

43. The next point concerns the correctness of the dissolution of Partnership by the Arbitrator and in finding the same to be void and vitiated by fraud. Before proceeding to consider the contentions put forth by either side on this count, it is relevant to note that there is a consensus across the bar that the partnership involved has suffered an irreparable breakdown and that neither of the parties desires the same to be revived. The parties do not thus aspire for a revival of the partnership, nor do they seek to disturb the dissolution of the same by the Arbitrator.

44. It is noted that the learned Arbitrator, while proceeding to



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dissolve the partnership, had elaborately considered the question whether the partnership had been created under fraud and whether there had been any pooling of resources towards meeting consideration. After appreciating the first partnership deed, viz., Exhibit A5, as well as the subsequent modified partnership deeds Exhibits A8 to A11, it was concluded by the Arbitrator that the deeds are silent regarding any cash investment. However, based on the reference in the Income Tax Returns produced, it was noted that the claimant had invested ₹ 50,000/- and the other partners an amount of ₹25,000/- each. It was concluded that there had at least been a symbolic investment, and the Arbitrator thereafter had elaborately considered the evidence to ascertain whether there was indeed pooling of resources.

45. In the facts and circumstances as revealed through evidence, the Arbitrator concluded that the claimant and the Respondents were running the business in Foreign Liquors, and they had been running the hotel and restaurant as a partnership business. That there was no mention whatsoever about any investment, either in cash or in kind, made by any of the partners and that the so-called investment of huge amounts is not recorded in the documents, was arrived at by the Arbitrator based on the



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evidence tendered. It was also concluded by the Arbitrator that there is nothing on record to hold that the partnership deeds were executed after making any investment, and that the income tax returns submitted by the claimant would show that none of the partners had made any actual investment. Taking note of the fact that after the execution of Exhibit A5, the business was being run as a partnership business and not as an individual business of the claimant, and that there had been a deemed investment of all partners, and creation of revenue by the firm, the Arbitrator, decided that there had to be a dissolution of the firm as it stood then. Such a course adopted by the Arbitrator was, as deemed fit in the facts and circumstances, based on the finding that evidence for monetary consideration moving from the Respondents to the claimant or to the firm's account was lacking, and cannot be exigible to interference in Section 34 proceedings or in this Appeal. Admittedly, the firm had completed its existence for around 18 years, during which it had acquired assets and liabilities. Since the situation had turned not conducive for continuing the partnership, and neither of the parties was desirous of continuing the partnership business, a fair dissolution and settling of accounts was warranted. The Arbitrator had accordingly chosen to



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dissolve the partnership and settle its accounts.

46. Much contention had been put forth regarding the use of the word 'fraud' by the Arbitrator while concluding Exhibit A5 partnership deed to be void and inoperable between the parties. It is to be noted here that rather than the terminology that had been used by the Arbitrator, he had, after a detailed adjudicative exercise, concluded that the relationship was not valid or sustainable for the reasons explained. Once the Arbitrator appointed by the parties after appreciation of evidence concludes that the arrangement is vitiated and set aside the same, the terminology used in that respect is insignificant, and the said conclusion of the Arbitrator cannot be contested under Section 34 or Section 37 of the Act of 1996.

47. The Senior Counsel for the Appellants have argued that an incongruity in the finding arrived at by the learned Arbitrator, since on the one hand, it had been found that the partnership is void for non consideration, while on the other a direction is issued to dissolve the same, settling the accounts and fixing the modalities in the said respect. According to the learned Senior Counsel, there could be no partnership to dissolve and assets distributed had it been void from the inception.



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48. The said contention of the Appellants cannot be sustained in the facts and circumstances of the case. Firstly, as concluded by the Commercial Court, the relief sought in the arbitration was for declaring the partnership as non-existent and void or, in the alternative, to dissolve the partnership by settling the accounts and issuing consequential orders. The Respondents had not raised any objection in considering the said reliefs and issues that had been framed accordingly. The conclusion arrived at by the Arbitrator to dissolve the arbitration was the most practical and reasonable course open. The Commercial Court has already concluded that the Arbitrator had decided the matter without violating the fundamental policy of Indian law. We find no reason to interfere with the said findings of the Commercial Court, especially in the fact situation where both parties are *ad idem* regarding the need to dissolve the partnership.

49. This takes us to the next question, considered by the Arbitrator and affirmed by the Commercial Court, regarding the sale agreements which were purportedly entered into as shadow agreements to augment the partnership. The Arbitrator had specifically drawn issue Nos.7 and 8 concerning the validity of Exhibits A6 and A7 sale deeds and



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after a detailed appreciation of evidence, concluded that the same are not supported by any consideration and are null and void. It has been concluded by the Arbitrator that no suggestion had been put with respect to any vendees having parted with anything as consideration, at any time, and only a vague contention that due consideration was paid for execution of Exhibit A6 and Exhibit A7 had been taken. It was also found that there had been no supporting oral evidence to substantiate as to who paid the consideration, when it was paid or what amount was paid.

50. It is seen that the Arbitrator had explained the reasons for arriving at the above conclusion after having examined the evidence tendered, including the deposition in this respect by RWs 1 and 2. It was only thereafter that it was concluded that, other than the so-called investment made before execution of the partnership deed, none of the Respondents had parted with any amount for the purpose of acquisition of the property as per Exhibits A6 and A7. Even though a contention had been put forth that the audit report and balance sheet would show that the income of the firm was utilised for the purchase of the property as per Exhibits A6 and A7, even if it had been concluded that even if there is any such payment from the firm, it is of no consequence as the vendees



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are individuals and not partners. It was concluded that there had been no pleading that the payment was made from the firm to the partners, which in turn was paid to the claimant for the acquisition of the property in their name. The Arbitrator concluded that absolutely there is no evidence regarding payment of consideration, and based on the evidence on record had concluded that none of the vendees had paid any amount towards the sale consideration for Exhibit A6 and Exhibit A7. It is trite that a party to a contract is competent to adduce evidence to prove want of or failure of consideration, and the bar under Section 91 and (2 of the Evidence Act does not get attracted [See *Vasu* (supra) & *Matthew* (supra)].

51. The Commercial court had considered the challenge put forth in this respect and had concluded that the available records and the award reveal that no amount was paid to the claimant in relation to the execution of the deeds, including Exhibits A6 and A7. The Commercial Court had, taking note of the said unequivocal findings of the Arbitrator, held that the finding that documents were not supported with consideration and the conclusion that the consequential terming of the said documents as void does not militate against the fundamental policy of Indian law.

52. We find no reason to interfere with the said conclusion arrived



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at by the Commercial Court since nothing is forthcoming to show that the said conclusion arrived at by the learned Arbitrator could not have been arrived at in the evidence placed on record before the Arbitrator. The said view arrived at by the Arbitrator was a valid and possible view, in the light of the evidence tendered. It is trite that the Court, while exercising jurisdiction under Section 34 of the Act of 1996, does not sit as the Court of Appeal, and the Arbitral Tribunal is the final adjudicator of the facts and evidence adduced before it.

53. It is trite that the Court is not permitted to re-appreciate the evidence placed before the Arbitrator as the Arbitrator is the best Judge of the quality as well as quantity of evidence and it will not be for the Court to take upon itself the task of being a Judge of the evidence before the Arbitrator. It is not permissible for the court to interfere with the Arbitrator's view merely because another view of the matter is possible. The aforesaid principles have been repeatedly reiterated by different courts, including the Hon'ble Supreme Court. [See ***Lloyd Insulations*** (supra)]

54. We thus conclude that the finding of the Arbitrator that Exhibits A6 and A7 sale deeds lack consideration, rendering them and



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subsequent sales void, thus not impacting the rights of the claimant over the scheduled 1 and 2 properties, was rightly affirmed by the Commercial Court. We do not find any reason to interfere with the said finding in this Appeal.

55. The next point for consideration is the transferability of the FL-3 Licence which apparently was the attraction to join the partnership. The claimant had contended that the Partnership Deed as well as the sale deeds to the extent they treat the FL 3 licence as a consideration for the respective arrangements, are illegal and consequently non est. The Arbitrator has, in the award, specifically left open the question of the legality of the partnership deed for its reference to the transfer of rights in the FL 3 licence that stood in the name of the claimant. Hence, prima facie there is no scope for entertaining contentions based on the same as seen put forth in the Section 34 petition and in this Appeal.

56. The Respondents, though, have put forth a feeble contention that the FL 3 licence is not per se non-transferable; it is admitted by them that the said license was acquired by the claimant even before the execution of the partnership deed. FL3 licence by law is not transferable and clause 13 of Exhibit A3 license as well as Rule 191 of the Foreign



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Liquor Rules, prohibit such transfer of license in favour of any person. It had been concluded by the Commercial Court that there is no evidence to show that the issuing authority had at any point of time transferred the FL3 licence in favour of the firm after the execution of Exhibit A5. The licence continued in the name of the claimant in whose name it was issued by the competent authority. It is trite that an FL 3 licensee, when he enters into a partnership for exploiting the license, will be parting with his exclusive right under the license in favour of other partners. The partnership to transfer or parting with the exclusive rights under the license is against the Abkari Act and the Rules because the license which originally belonged solely to the licensee now becomes subject to the rights of other partners to the partnership. Thus the licensee by entering into a partnership transfers a portion of his privilege under the license in favour of other partners. The partnership that has been entered into for sharing the privilege in dealing in liquor with other partners is thus a prohibited one. Such a contract of partnership is void under Section 23 of the Contract Act. Such a void contract of partnership cannot be recognized as a genuine partnership under the Income Tax Act, 1961 also. [See *Narayanan & Co.* (supra)].



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57. It is trite that the Court under Section 34 would have jurisdiction or would be justified in interfering with the award only if there exists a total perversity in the award or that it is based on a wrong proposition of law. Even where two views are possible on a question of law, the Court would not be justified in interfering with the award. Hence, for a party to succeed in its challenge of an arbitral award, it has to be shown that the award of the Arbitrator suffered from perversity or an error on law or that the Arbitrator has otherwise misconducted himself. [See ***UHL Power Company Ltd.*** (*supra*)] The Arbitrator had validly reasoned that he had left open the question of legality of the partnership deed for its reference to the transfer of right in the FL 3 licence that stood in the name of the claimant, as the said question was not integral or necessary for deciding the issue at hand. In view of the said specific finding, the said question cannot be raised by the parties either in support or to contest the award at Section 34 stage, much less in an Appeal under Section 37 of the Act of 1996. The contentions made in the said respect thus do not assist the case of the Respondents in this Appeal.

58. It is trite and settled that the appellate court can step in and set aside the order passed under Section 34 of the Act of 1996 only where



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the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction. Its power vested in this Court is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered with unless a case for interference as set out in the earlier part of the decision is made out. It cannot be disturbed only for the reason that, instead of the view taken by the arbitral tribunal, the other view, which is also a possible view, is a better view according to the appellate court.

59. As revealed from the above discussion, the Arbitrator had arrived at the conclusion seen made in the award based on materials produced before him. It had been unequivocally concluded that no sale consideration had parted, and the statements in Exhibit A6 and Exhibit A7 are contradictory to those in Exhibit A5 partnership deed. No contrary evidence had been adduced by any of the Respondents to prove that a valid consideration had passed, when it was paid or to whom the same was paid. Similarly, there is no evidence to show that, other than the so-called investment made before execution of Exhibit A5, any of the Respondents have parted with any amount for the acquisition of property as per



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Exhibit A6 and Exhibit A7. The Respondents who had a duty to produce tangible evidence to prove the passing of consideration had failed to prove the same. Nothing had been placed on record to show that the amount stated to be paid by the vendees in cash on the date of Exhibit A6 and Exhibit A7 was actually parted with. Similarly, there had been an abject lack of evidence which would go to show that the vendees have discharged the liability as stated in the recitals in Exhibits A6 and A7. From the evidence on record, the Arbitrator had thus concluded that Exhibits A6 and A7 were shadow documents.

60. It is in this context that the general consensus among the parties that at this belated point of time they are not eager to revive the Partnership assumes relevance. The relationship has irreparably broken down and it is agreed that it is not at all feasible to revive the partnership. Since the parties neither do not seek to revive the partnership nor do they wish to seriously challenge its dissolution as ordered by the Arbitrator to lead to its revival, the question whether the Arbitrator's finding that the partnership agreement is void remains no longer relevant for determination.

61. As regard the rest of the conclusions arrived at by the



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Arbitrator in the award, including the declaration that the sale deeds and the subsequent sale deeds are null and void and would not affect the title of the claimant, as well as the determination of the fixed assets of the firm and its apportionment among the partners. Appellants have failed to put forth any valid reason to interfere with the findings in the said respect. The grounds raised to challenge the order of the Commercial Court are also insufficient to merit an interference in an Appeal under Section 37.

62. Accordingly, it is hereby held that no ground has been made out to justify the setting aside of the arbitral award dated 30 March 2017 under Section 34 of the Arbitration and Conciliation Act, 1996, and no basis has been demonstrated to warrant interference with the order dated 03 September 2022 of the Commercial Court under Section 37 of the Act.

The Arbitration Appeal is dismissed. No costs.

**Sd/-
NITIN JAMDAR
CHIEF JUSTICE**

**Sd/-
SYAM KUMAR V.M
JUDGE**



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APPENDIX OF ARB.A NO. 2 OF 2023

PETITIONER ANNEXURES

- Annexure1 A TRUE COPY OF THE CLAIM STATEMENT DATED 29.08.2013 FILED BY THE 1ST RESPONDENT (CLAIMANT IN ARC) IN ARC 7 OF 2014 BEFORE THE ARBITRAL TRIBUNAL
- Annexure2 A TRUE COPY OF THE OBJECTION DATED 31.10.2013 FILED BY THE 8TH APPELLANT (11TH RESPONDENT IN ARC) IN ARC 7 OF 2014 BEFORE THE ARBITRAL TRIBUNAL
- Annexure3 A TRUE COPY OF THE OBJECTION DATED 31.10.2013 FILED BY THE 10TH APPELLANT (10TH RESPONDENT IN ARC) IN ARC 7 OF 2014 BEFORE THE ARBITRAL TRIBUNAL
- Annexure4 A TRUE COPY OF THE AWARD DATED 30.03.2017 IN ARC NO. 7 OF 2014 DATED 30.03.2017 PASSED BY THE ARBITRATOR
- Annexure5 A TRUE COPY OF THE OP(ARB) BEARING NO. 35 OF 2021 (OP(ARB) 121/2017 PRIOR TO RENUMBERING) DATED 27.07.2017 FILED BY THE PETITIONERS BEFORE THE COMMERCIAL COURT KOLLAM