



2025:DHC:639



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ REVIEW PET. 22/2025, I.A. 1296/2025, & I.A. 1297/2025
IN
O.M.P. 437/2011

KRISHAN KUMAR & ANRPetitioners
Through: Mr. Praveen Suri and Mr. Sagar
Nandwani, Advs.

versus

SHAKUNTLA AGENCY PVT LTDRespondent
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% **31.01.2025**

1. I have heard Mr. Praveen Suri on the present review petition, which seeks review of judgment dated 25 July 2024 passed by me in OMP 437/2011.

2. Mr. Suri has urged only two grounds for review of the said judgment, neither of which, in my opinion, makes out a case for review.

3. The first ground urged by Mr. Suri is relatable to paras 7 and 8 of the judgment under review which read thus:

“7. Mr. Dubey contends that the ATS could not have been executed at all, as the allotment letter whereunder the disputed property was allotted to Mr. Zile Singh, the original allottee of the property, contained a specific covenant prohibiting further transfer



of the property by Zile Singh.

8. Admittedly, the aforesaid allotment letter dated 7 September 2006 was never part of the proceedings before the learned Arbitral Tribunal. Though, Mr. Dubey has sought to point out that there is a reference in the impugned award to the allotment having been taken place on 7 September 2006, that by itself cannot be regarded as knowledge, on the part of the learned Arbitrator, of the covenants of the allotment letter. The petitioners having never chosen to place the said allotment letter on record, or having pleaded before the learned Arbitrator that the allotment letter contained a non-transfer covenant, it is not open to the petitioners to urge such an argument in Section 34 proceedings.”

Mr. Suri relies on the judgment of the Supreme Court in **G.T. Girish v Y Subba Raju¹**, to submit that, as the allotment letter contained a negative covenant prohibiting further sale of the property in question, the Agreement To Sell was not specifically enforceable in law.

4. There can be no cavil with the said proposition. However, I have observed, in para 8 of my judgment, that the allotment letter dated 7 September 2006, which is purported to have contained the negative covenant prohibiting further sale, was never part of the record before the Arbitral Tribunal. As such, I have adopted the view that the said letter, or the covenants thereof, cannot constitute a justifiable basis to assail the Arbitral Award within the meaning of Section 34² of the Arbitration and Conciliation Act, 1996³.

¹ (2022) 12 SCC 321

² 34. **Application for setting aside arbitral award.** –

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if –

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that —

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise



5. It is well-known that Section 34 of the 1996 Act contains limited grounds on which an Arbitral Award can be assailed. Mr Suri submits that, by virtue of the clause in the allotment letter proscribing further sale of the property, the ATS, and its enforcement, would be patently illegal as well as contrary to public policy, both of which constitute legitimate grounds on which the arbitral award can be challenged.

6. To my mind, the primary fallacy in Mr Suri's argument is that, while patent illegality and public policy are unquestionably grounds for challenging an arbitral award, *the question of whether an arbitral award suffers from either of these infirmities has to be gleaned on the basis of the material which was before the arbitral tribunal.* It is well

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- unable to present his case; or
- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:
- Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
- (b) the Court finds that—
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
- (ii) the arbitral award is in conflict with the public policy of India.
- Explanation 1. – For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—
- (i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.
- Explanation 2. – For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.
- (2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award:
- Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

³ “1996 Act” hereinafter



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settled that the law advocates a policy of non-interference with arbitral awards, and that interference with arbitral awards, though undoubtedly necessary where the award breaches any of the considerations envisaged in Section 34, should be the exception, rather than the rule. If Courts were to set aside arbitral awards on the basis of documents which, though in the possession of the challenging party, were never produced before the arbitral tribunal, the very principle of finality of arbitral proceedings, and awards passed therein, would be seriously compromised. It would be open to a party not to produce a document before the arbitral tribunal and, thereafter, challenge the arbitral award on the ground that the award is contrary to the terms of said document. This, to my mind, is impermissible.

7. In my opinion, an Arbitrator cannot be said to have acted with patent illegality in failing to take note of a covenant which was contained in a document which was never placed before him. Nor can the arbitral award be said to be in violation of public policy, or of the fundamental policy of Indian law, in such circumstances.

8. While not disputing the fact that the letter dated 7 September 2006 was not placed before the Arbitral Tribunal, Mr. Suri's contention is that, once it was placed before this Court, this Court ought to have remanded the matter to the Arbitral Tribunal for a fresh consideration.

9. Such a contention is foreign to the Arbitration Act. There is no mandate in law for this Court to remand the matter to the Arbitrator to reconsider the case on the basis of material which was never placed



before him in the first instance, though the material was available with the party who later seeks to rely thereon.

10. The contention is, therefore, rejected.

11. The second contention advanced by Mr. Suri is with respect to para 15 of the judgment under review, in which I have accepted the contention of the petitioner that the reference to Plot no. 61 in one of the paragraphs of the agreement to sell was a typographical error. Mr. Suri submits that this finding is incorrect, as there was no signature against the said paragraph whereas there are signatures against other paragraphs of the Agreement To Sell.

12. The grounds on which I have treated the reference to plot no. 61 as a typographical error are apparent from paras 12 and 13 of my judgment, which may be reproduced thus:

“12. The last contention advanced by Mr. Dubey is that, in an undated notice which preceded the Section 21 notice dated 22 October 2007 issued by the Respondent 1 to the petitioners, the plot number is reflected as 61 and not as 66 whereas the dispute before the learned Arbitrator was with respect to Plot No. 66. Mr. Mishra points out that this was a mere typographical error and that, in fact in the very same letter, two paragraphs later, the plot number is correctly reflected as Plot No. 66. On going through the letter, this fact is found to be correct.

13. Besides the above discrepancy – if it can be called one at all – was not in the Section 21 notice issued by Respondent 1 but in the legal notice that preceded it. The Section 21 notice, in fact, did not advert to any plot number at all though it does make reference to the preceding legal notice.”

13. In that view of the matter, this contention of Mr. Suri also does



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not impress as a ground to revisit the judgment passed by me. It certainly does not constitute an error apparent on the face of the record.

14. No ground for review is made out. The Review Petition is dismissed.

15. As a result, no orders are required to be passed on the application for condonation of delay in filing the Review Petition, which is accordingly disposed of.

C. HARI SHANKAR, J.

JANUARY 31, 2025/ar

[Click here to check corrigendum, if any](#)