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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25.04.2025

+ **O.M.P. 610/2011**

RAM LABHAYA FARMAH & ORSPetitioners

Through: Ms. Abha Sharma & Mr. Abhishek
Yadav, Advs.

versus

UMESH VERMA & ORSRespondents

Through: Mr. Kamlesh Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition under Section 34 of Arbitration and Conciliation Act, 1996, seeking setting aside of the Award dated 26.07.2010 passed against the petitioners by the learned Arbitrator. Petitioners were the respondent before the Arbitrator and the respondent was the claimant.
2. The facts in the present case are that the petitioners entered into an Agreement to Sell dated 12.09.2008 with the respondent which is stated to be invalid, manipulated and motivated.
3. As per the Agreement, the petitioners had agreed to sell their property bearing No.EA-128, Inderpuri, New Delhi-110012.
4. It is the case of the petitioners that subsequently, the said agreement to



sell was cancelled by them on 24.11.2008.

5. Since there were disputes between the parties, the respondent initiated arbitration proceedings seeking specific performance of the agreement to sell as well as damages to the extent of Rs.50,00,000/- along with interest.
6. The address of the petitioners shown in the claim statement are as under:
 - “1. *Shri Ramlubhaya Farmah S/o Late Tilakram R/ o 106, back ford road, CARY, N.C.-27518, U.S.A.*
 - 2 *Smt. Sheela Devi Farmah W/o Shri Ramlubhaya Farmah R/o 106, back ford road, CARY, N.C.-27518, U.S.A.*”
7. The Arbitrator was appointed by the respondent unilaterally. On 17.04.2009, the learned Arbitrator issued notice to the petitioners at their address in America.
8. There is no order of the Arbitrator showing whether the respondents had been served, or if there was a perusal of any tracking report by the learned Arbitrator or any other finding that the petitioners had been served.
9. On 10.07.2009, the respondent requested for service of summons through publication.
10. On the next date of hearing i.e. 22.07.2009, the learned Arbitrator recorded as under:



Order Sheet

In arbitration petition No. 01/2009

In re:-

Shri Umesh Verma versus Shri Ramlubhaya Farmah & another

Presence:-

Claimant in person

None for the O.P. No.1 &2.

Notice for appearance has been published in the Hindu a news paper of national and international repute. Claimant submitted that opposite parties may be deemed served through publication in news paper. Heard. I am of the view that the opposite parties have been served by way of publication, however they are NRI thus before passing any adverse order against the opposite parties ,their response is being awaited. Matter is adjourned for 22.10.2009 for further orders and consideration.


 Chandra Nigam
 Sole Arbitrator

11. A perusal of the same shows that the respondent took steps to serve the petitioners through publication in 'The Hindu'. It is stated by the counsel for the petitioners that the Hindu does not have circulation in the U.S. The same is evident from the order of the Arbitral Tribunal which records that the Hindu is a newspaper of national and international repute, but does not mention that it has circulation in the U.S.
12. The purpose of publication in a newspaper is only for the purpose that it could be/may be seen by the person on whom service is sought to be effected.
13. A newspaper of international repute does not mean that it is published and circulated in the U.S. and hence, the publication in the Hindu is merely a paper formality.
14. Based upon the said publication, the learned Arbitrator, on the next date i.e. 22.10.2009, proceeded *ex-parte* against the petitioners and



thereafter, published the *ex-parte* award.

15. For this reason alone, the Arbitral Award dated 26.07.2010 is liable to be set aside as the petitioners have not been served and an award has been passed *ex parte*. This is in clear violation of principles of natural justice. The Hon'ble Supreme Court in the case of ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Company 2024 SCC OnLine SC 3219*** observed as under:-

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76. The principles of natural justice principally consist of two rules: (i) no one shall be a judge in their own cause (nemo judex in causa sua); and (ii) no decision shall be given against a party without affording a reasonable opportunity of being heard. Adherence to the principles of natural justice is a facet of procedural fairness. A decision made by the State to the prejudice of a person must be after following the basic rules of justice and fair play. The principles of natural justice are applied because administrative or quasi-judicial proceedings can abridge or take away rights. Application of the principles of natural justice prevents miscarriage of justice. Natural justice has both an intrinsic and an instrumental function. The intrinsic function values natural justice as an end in itself. It values natural justice as an essential feature of fairness. In its instrumental element, natural justice is viewed as a means to achieving just outcomes.

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16. Additionally, even on merits, the Arbitral Tribunal has awarded Rs.50,00,000/- as damages to the respondent. The reason for damages is found in *para 11* which reads as under:

“11. That in response to issue no. b, clause 4 of agreement to sell dated 12.09.2008 has been referred by the claimant. Clause 4 of the said agreement is reproduced herein below: -

" That the first party further assures the second party that the said property is their exclusive property and as such they are fully competent to enter into this agreement to sell with the second party and if someone else claims any right, titled and interest in the aforesaid property as owner or otherwise or raises any objection for the sale of the said property then the first party shall be liable and responsible for all damages and /or losses suffered by the second party."

By virtue of this clause the claimant has made a claim of damages @ Rs. 5000000/ (fifty lacs). He has submitted that he has given his hard earned money to the O.P. no.1 &2 to get the ownership rights, however he same has been usurped by them and he has been left with no ownership right, which has adversely affected his future planning. Even he has not been left with option to purchase other property since rate of property has shoot up in the market. To get the bank loan for purchase of property became almost impossible due to



non-availability of initial down payment with the claimant. Thus he is entitled for damages @ Rs. 5000000/(fifty lacs). The contention of the claimant is considerable and this issue is also decided in his favor.”

16. In the view of aforesaid discussion and on the basis of material on record I hereby pass an award of Rs. 50 Lacs (fifty lacs) in favor of claimant as damages and against the opposite party no.1 &2 and also pass an award of interest @ 18% P.A. on the aforesaid award amount from the date of institution of claim petition by the claimant before me till realization.

17. A perusal of the *para 11* and *para 16* shows that the same are made without any evidence or material before the learned Arbitrator.
18. The learned Arbitrator has simply relied on the averments made by the respondent without there being any evidence in support.
19. There is no evidence on record as to how the rights of the respondent have been adversely affected for his future planning, how the respondent has sought to purchase any other property. There is no evidence on record as to what was the rate of loan at the time the agreement to sell was entered into, or at time when the impugned award was passed.
20. The finding of award of damages by the learned Arbitrator is based purely on his surmises and conjectures without their being any



supporting evidence for his conclusions, thus making the award as invalid and patently illegal. The same has been observed by the Hon'ble Supreme Court in the case of *Delhi Metro Rail Corporation Limited v. Delhi Airport Metro Express private Limited (2024) 6 SCC 357* observed as under:-

"39. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."

21. The learned Arbitrator has refused to pass the order for specific performance, in para 12 of the Award, which reads as under:-

That the claimant has sought relief of specific performance of the above said contract, which is out of preview of this tribunal and this tribunal can not pass any order on this point. The claimant may approach the court of law for the same.

The respondent is already prosecuting his remedy for the same in a



civil suit.

22. For the said reasons, the petition is allowed. Arbitral Award dated 26.07.2010 passed by the sole Arbitrator is patently illegal, perverse, violative of principle of natural justice and hence is set aside.

JASMEET SINGH, J

APRIL 25, 2025/pk

(Corrected and released on 29.04.2025)

Click here to check corrigendum, if any