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AA-56-2015

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 23rd OF FEBRUARY, 2026ARBITRATION APPEAL No. 56 of 2015*BHAGWANTI AND OTHERS**Versus**MAJOR (RETD.) S.R. GODRA AND OTHERS*

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Appearance:

Shri Subodh Kathar - Advocate for the petitioners.

Ms. Sunanda Kesharwani - Advocate for respondents.

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ORDER

By way of present appeal challenge is made to the order dated 13.05.2015 passed by the District Court in application under Section 34 of Arbitration and Conciliation Act, 1996 (for short ' Act of 1996') whereby the application for setting aside the award of the arbitrator and to allow the claims of the present petitioner has been rejected by holding that no grounds are made out to interfere in the award passed by the sole arbitrator by exercising limited jurisdiction under Section 34 of Act of 1996.

2. The counsel for the appellant has argued that the partnership deed was constituted between the present appellant as well as respondents No.1 and 2. The respondents No.1 and 2 are the father and son while the appellant is brother-in-law of respondent No.1. By taking this court through the partnership deed it is argued that the partnership deed was constituted on 26.7.1985 and as per the aforesaid partnership deed a business of manufacturing bricks was to be carried out by the parties and there was a clear condition that the initial capital investment of the parties shall be in profit or loss sharing ratio and if any partner invests more than



the share capital, he shall be paid interest at the rate of 18% per annum on the excess amount he invested. It was argued that as per Clause-6 of the partnership deed the investment shall be equal and the shares of the partners in the profit or losses shall be one third each. Despite that the appellant was denied the one third of share of profit and more particularly the denial which led to the appellant to raise claims was that some bricks were supplied by the firm to National Thermal Power Corporation ('NTPC' for short) and the letter of award was issued to the firm on 25.03.1985. Thereafter certain disputes arose in the matter of payment to be made by NTPC to the firm and arbitral proceedings were instituted between the firm and NTPC as a result of which arbitral award was passed in favour of the firm on 25.05.2004. However the entire payment was taken by the respondent No.1 in his personal account in terms of the arbitral award and the present appellant was also entitled to one third of the amount as per the amount paid by NTPC in terms of award of sole arbitrator namely Shri N. S. Choudhary dated 25.05.2004.

3. Therefore arising from the share of the appellant in the amount received by the firm from the award of arbitrator Shri N. S. Choudhary, the dispute arose between the parties.

4. It was contended that thereafter sole arbitrator was appointed and the arbitrators were changed and later on Shri S.L. Gupta was appointed as sole arbitrator and the said sole arbitrator has delivered his award which is under challenge in the present matter and the sole arbitrator has simply rejected the claims of the petitioner by erroneously holding that the appellant had not made any investment in the firm and that the appellant does not seem entitled to share of one third of the amount received by the firm from award of Shri N. S. Choudhary and his demand of one third share in the awarded amount of the arbitrator's award



which the firm had succeeded against NTPC does not seem proper and substantiated in absence of the appellant failing to prove that he had invested any amount.

5. The counsel for the appellant has further stated that the District Court while rejecting application under Section 34 of Act of 1996 did not even call for the record of the arbitrator and without any attempt to call for record of the arbitrator, the District Court has erroneously rejected application under Section 34 of Act of 1996.

6. *Per contra*, learned counsel for the respondent No.1 has vehemently argued that the award of the arbitrator is justified because the appellant wanted share in the money received by the firm from award passed by Shri N.S. Choudhary sole arbitrator in the year 2004 when the firm had made supplies of bricks to NTPC. It is contended that the appellant was not part of the firm when the contract had been awarded and also that the firm had been dissolved shortly after it had been constituted. Moreover, the appellant had not invested any amount in the firm and in absence of investment of any amount, he cannot claim 1/3 share in the profits. The investment being in profit/loss sharing basis shall mean 1/3 each and not that no investment was to be made at all. In fact the partnership firm had not done any business under the partnership deed and the appellant has seen the arbitral award rendered by Shri N. S. Choudhary as golden opportunity to demand one third of the amount received by the firm by way of the said award. Therefore it is argued that the order impugned be confirmed and the rejection of claim of the appellant is justified.

7. Heard.

8. The matter relates to the share of an amount awarded by sole arbitrator Shri N. S. Choudhary to firm M/s. Godhra Brick Enterprises vide award dated



25.04.2004. As per the letter of award, which is placed on record, the tender notice for the said work was issued on 02.08.1984 and letter of award was issued on 25.03.1985 to the firm known as M/s. Godhra Brick Enterprises. On the other hand, the partnership deed which is relied by the appellant has been constituted on 26.07.1985 and the name of the firm was to remain the same i.e. M/s. Godhra Bricks Enterprises. It appears that the said firm was already doing business and prior to 26.07.1985 the appellant was not member of the said firm. As per the partnership deed, he seems to be inducted as member of the said firm on 26.07.1985 by converting proprietorship firm to partnership firm, even if the partnership deed is seen at its face value.

9. Therefore, on the date of execution of agreement and award of agreement by NTPC to the firm, the appellant was not part of the firm and he became partner of the firm on 26.07.1985 only.

10. The award passed by Shri N. S. Choudhary sole arbitrator in the matter of dispute between the firm and NTPC has been perused by this Court and therefore, it can be inferred by this Court and from a perusal of the partnership agreement, it appears that the supply of bricks started to take place from a date prior to the induction of appellant in the partnership firm.

11. As the firm was in operation prior to induction of the appellant in partnership then it was natural that the firm had already established its brick kiln etc. as it had been awarded contract to supply one crore bricks to NTPC. The brick kiln specific for the work in question had to be established in the land of NTPC and from a perusal of award of Shri N. S. Choudhary, it is clear that the manufacture of bricks had started even prior to May, 1985.

12. In view of the aforesaid circumstances, the appellant was bound to show and establish that in what manner he had made investment in the said firm.



In his statement of claim before the arbitrator he had stated that he had made certain investment in the year 1979 and 1981 and his tractor was part of the capital of the firm. He further stated in the claim that the brick kiln was raided on 03.05.1985 and the kiln was then taken over by NTPC in the year 1986. From a perusal of these claims, it seems that all the investments that the appellant states to have made in the firm are prior to 26.07.1985 on which date he states that partnership agreement was signed.

13. If he had made any investment in the firm prior to 26.07.1985 then that should have been made part of the partnership deed but in the partnership deed nothing has been mentioned that what is the investment made by the appellant in the firm though the firm was working prior to induction of appellant as part of the firm.

14. Therefore, burden was on the appellant to establish that what investment had been made by him in the firm and even from the statement of claim it does not appear that any investment was made by the appellant after 26.07.1985 which was required to be established or at least pleaded by him. There is not even pleading that what was the investment made by him after 26.07.1985. It may be that prior to 26.07.1985 he was simply working in the firm but he does not seem to be a co-owner or partner in the firm prior to 26.07.1985.

15. The arbitrator has categorically held in his award that the appellant not having pleaded and proved his investment in the partnership firm, the arbitrator cannot award 1/3 of the amount received by the firm from the award of arbitrator in the matter of dispute between the firm and NTPC because even if the entire amount received from the NTPC is treated to be profit of the firm, even then the arbitrator could only award the share in the ratio of the capital invested by the



appellant. However, in absence of any pleading and proof as to the capital invested by the appellant, the arbitrator could not pass any order or any award directing payment of any share out of the amount received under the arbitral award from NTPC.

16. The scope of jurisdiction of the Court under Section 34 of Act of 1996 is very limited and the scope under Section 37 also does not extend to a greater scope than the scope enjoyed by the District Court under Section 34.

17. In the considered opinion of this Court, the District Court has rightly not found any ground of interference in the award passed by the sole arbitrator Shri S. L. Gupta that may justify interference under section 34.

18. Consequently, finding no ground to interfere in the present appeal, the same fails and is **dismissed**.

(VIVEK JAIN)
JUDGE

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