

SUPREME COURT OF INDIA

Rajni Sanghi

Vs.

Western Indian State Motors Ltd. & Ors

C.A.No.3687 of 2006

(Vikramajit Sen and Shiva Kirti Singh, JJ.)

01.12.2015

JUDGMENT

Shiva Kirti Singh, J.

1. These three Civil Appeals have been heard together because in essence they relate to and arise out of common facts and disputes between members of a larger family belonging to the branches of four sons of Late Motilal Sanghi, the family patriarch who died in 1961. From the materials on record it appears that his four sons effected a de facto partition of the then existing three family business. The eldest son (Late) N.K. Sanghi became in charge of family business in Rajasthan. The next brother (Late) A.K. Sanghi got charge of business at Delhi and the remaining two, R.K. Sanghi and M.K. Sanghi got charge of business at Bombay. In 1964 Sanghi Motors Private Limited (Bombay) expanded to establish a factory for manufacture of oxygen in the name of Sanghi Oxygen. R.K. Sanghi looked after the oxygen division and the youngest brother M.K. Sanghi looked after the motor division of the Sanghi Motors Private Limited (Bombay). Whether in the form of partnership firm or as a company, the family business appears to have been held by the brothers like a partnership firm in which all the brothers have cross holdings. With passage of almost two decades and changing profile of family headed by the four brothers there was apparently some friction first at Bombay which led to an arrangement signed by the four brothers on 6.7.1983. This was mainly for resolving dispute of authority between the two brothers in respect of business at Bombay. Soon thereafter attempt was made for a larger family agreement for partition of all the family business consisting of four partnership firms and four companies. This family agreement involving the methodology of partition chalked out on 22.2.1984 in a board meeting of M/s Sanghi Motors Private Limited (Bombay) held at Jodhpur ran into rough weather and could not be implemented because of differences. Thereafter all the four groups entered into an arbitration agreement on 6.8.1984 and appointed one Sh. H.K. Sanghi, a family friend as the sole arbitrator for effecting a partition of the family business under the control of four groups into four equal lots but with an understanding that the division would maintain the place of business of each group as it existed already.

2. The subsequent developments and relevant facts will be detailed hereinafter at appropriate place but it is useful to notice that on 7.8.1984 N.K. Sanghi filed the arbitration agreement with the Arbitrator who entered into reference on 18.8.1984 and made communications with the other three brothers. N.K. Sanghi expired on 19.10.1984. On filing of appropriate application by N.K. Sanghi group the Delhi High Court enlarged the time for publication of the award by the Arbitrator. During the pendency of the reference M.K. Sanghi filed a company petition bearing C.P. No. 128 of 1985 before the High Court of Bombay mainly seeking injunction against A.K. Sanghi and R.K. Sanghi in respect of shares and management of both the divisions of Sanghi Motors Private Limited (Bombay). Family members of A.K. Sanghi and R.K. Sanghi filed a petition under Section 33 of the Arbitration Act, 1940 before Delhi High Court to challenge the existence and validity of arbitration agreement dated 6.8.1984 but ultimately High Court of Delhi permitted the arbitrator to make and publish the award. The award dated 3.12.1987 was filed with High Court of Delhi which recorded the filing on 17.12.1987 and notice was issued to the parties. Objection to the award was filed by M.K. Sanghi within time and beyond time by R.K. Sanghi and also by Sanghi Motors Private Limited (Bombay). On the other hand A.K. Sanghi (now represented by his sons Vijay Sanghi and Ajay Sanghi, appellants in C.A. No. 2763 of 2002) filed Suit No. 581-A/1988 under Section 17 of the Arbitration Act, 1940 in the High Court of Delhi to make the award a rule of the Court. Learned Single Judge of the Delhi High Court took notice of subsequent developments in the company case at Bombay High Court and in another Company petition no. 6 of 1986 filed by R.K. Sanghi in the High Court of Rajasthan and set aside the award by order dated 11.12.1996. This order was upheld in appeal by the Division Bench vide impugned order dated 5.10.2001 which is under challenge in Civil Appeal of 2763 of 2002.

3. Interestingly, no one could obtain a stay of the proceedings in the Company Petition No. 128 of 1985 before the High Court of Bombay which appointed a Receiver with respect to the Sanghi Motors Private Limited (Bombay) and all its subsidiaries by an order dated 11.9.1987. On the basis of a successful bid, Vaibhav Sanghi son of M.K. Sanghi entered into an agreement with the receiver and exercised right of management in terms of such agreement. Ultimately, Bombay High Court vide order dated 6.7.1989 sanctioned the scheme of division of two units of Sanghi Motors Private Limited (Bombay). Motors division fell to the group of M.K. Sanghi and oxygen division to the group of R.K. Sanghi. A.K. Sanghi opposed the aforesaid settlement scheme before the Company Court as well as through an appeal before the Division Bench but without any success. The Division Bench dismissed the appeal on 30.6.1992 after holding that the scheme of reconstruction did not violate the injunction order of the High Court of Delhi as care was taken to ensure that under the scheme the transfer of shares would be effected only after the injunction would be vacated by the Delhi High court. The Bombay company case has thus attained finality.

4. The Company Petition No. 6 of 1986, already noticed earlier was filed by R.K. Sanghi group on 6.8.1986 before the High Court of Rajasthan under Section 397-398 of the Companies Act against Western India State Motors Limited (WISM), Smt. Uma Sanghi (widow of late N.K. Sanghi), Vijay Kumar Sanghi (son of A.K.

Sanghi) and an official of Rajasthan State Industrial Development and Investment Corporation. In this company petition which remained pending for a number of years, ultimately a scheme of reconstruction and family settlement was arrived at between persons representing three groups i.e, A.K. Sanghi, R.K. Sanghi and N.K. Sanghi. This scheme dated 5.9.1994 with a correction dated 6.9.1994 was approved by the High Court of Rajasthan on 5/6.9.1994. Although M.K. Sanghi was not a party to this scheme but his interest clearly received considerable attention. His objection to the award was within time and pending before the High Court of Delhi in the Suit no. 581-A/1988 filed by A.K. Sanghi group to make the award a rule of the Court. In paragraph 13 of the scheme of reconstruction filed in Company Petition No. 6 of 1986 a clear stipulation was made in following words –

“13. That Shri A.K. Sanghi and his family members have filed a petition in Delhi High Court for making the award of the Arbitrator dated 3.12.1987 as rule of the Court being petition no. 581-A/1988. Shri A.K. Sanghi hereby undertakes to withdraw the said proceedings unconditionally and all the parties further agree that they shall abide by the terms of the scheme of reconstruction.”

The scheme was signed by R.K. Sanghi and A.K. Sanghi also on behalf of their respective family members. It involved passing of immovable property from one group to another as well as payment of substantial amounts of money for completing the adjustment required by way of reconstruction-cum-family settlement. The widow of N. K. Sanghi, Smt. Uma Sanghi as well as the petitioners of that company petition, Mr. R.K. Sanghi and his wife along with A.K. Sanghi as well as one son and daughter in law of Uma Sanghi were personally present before the learned Single Judge when the Company Petition No. 6 of 1986 was disposed of in terms of the scheme of reconstruction-cum-family settlement. The order of the Court dated 5.9.1994 records that Mr. R.K. Sanghi as well as Mr. A.K. Sanghi agreed to obtain the consent of their family members and file the same within two weeks.

5. The orders of learned Single Judge of High Court of Rajasthan accepting the scheme of reconstruction-cum-family settlement were challenged in appeal filed by M.K. Sanghi bearing Civil Special Appeal No. 30 of 1994. Much later in October 1998 R.K. Sanghi filed an affidavit in the aforesaid appeal alleging that Uma Sanghi was not honouring her commitments under the scheme, hence he was now of the view that the scheme be set aside. Since learned Single Judge had rejected an application for impleadment filed by Mrs. Rajni Sanghi, widowed daughter-in-law of Uma Sanghi, Rajni Sanghi also preferred Special Appeal No. 24 of 1994 before the Division Bench but while both the appeals were pending, on 20.2.1995 she entered into a compromise and settlement with the other parties who were signatory to the family settlement. M.K. Sanghi prayed for and was granted time to examine the terms of the aforesaid settlement. While the appeal preferred by M.K. Sanghi was still pending before the Division Bench of Rajasthan High Court, curiously he and his group filed an additional affidavit on 14.8.1995 in Suit No. 581-A/1988 before High Court of Delhi for setting aside the award on the additional ground that A.K. Sanghi had undertaken before the High Court of Rajasthan to withdraw his application to make the award a rule of the Court. As noted earlier, this weighed heavily with the learned Single Judge as well as the Division

Bench of the Delhi High Court in setting aside the award. Sanghi Motors Bombay, under the control of N.K. Sanghi group also filed a Contempt Petition no. 107 of 1997 before the High Court of Rajasthan alleging that Mr. A.K. Sanghi was guilty of contempt of order dated 5.9.1994 as he was still persisting with Suit No. 581-A/1988 when he had undertaken to withdraw the same. This contempt petition was dismissed vide order dated 3.4.2000 as the Court came to the opinion that non-compliance was on account of certain circumstances and not wilful. This order against Sanghi Motors is subject matter of Civil Appeal No. 503 of 2001 which shall also be governed by this common judgment.

6. The Division Bench of High Court of Rajasthan had permitted Vijay Sanghi son of A.K. Sanghi to be transposed as appellant in Company Appeal No. 30 of 1994 and hence the appeal continued even after M.K. Sanghi filed an application on 4.7.2000 to withdraw that appeal. Ultimately by judgment and order dated 3.4.2002 the Rajasthan High Court allowed Appeal No. 30 of 1994 as well as Appeal No. 24 of 1994 and remitted the matter again to the learned Company Judge to proceed in accordance with law, mainly because the Division Bench found a case of non-compliance of sub-clause (1) of Section 391 of the Companies Act. The Division Bench noticed objections raised on behalf of respondents that the situation had become irreversible as major part of the scheme had been given effect to, but it left this aspect open for consideration by the learned Company Judge after remand. Rajni Sanghi did not accept the Division Bench order and preferred a Civil Review Petition bearing No. D.R. (J) 2536/2002 pointing out that she had already compromised the matter by way of a subsequent scheme and filed the compromise petition on 20.2.1995; the only non-signatory group i.e, M.K. Sanghi group had subsequently accepted that compromise/settlement and had prayed for withdrawal of Appeal No. 30 of 1994 and therefore when all the stake holders had accepted the terms of settlement and family arrangement, there was no need of interfering with the order of the Single Judge. The review petition was however dismissed on 26.8.2003. The aforesaid orders of Division Bench dated 3.4.2002 partly allowing Appeal Nos. 24 and 30 of 1994 and order dated 26.8.2003 dismissing the review petition are under challenge at the instance of Rajni Sanghi in Civil Appeal No. 3687 of 2006.

7. In the aforesaid fact situation, this common judgment will govern all the three civil appeals. For the sake of convenience, facts have been taken from convenience compilations in C.A. No. 2763 of 2002 unless indicated otherwise. That civil appeal has been argued at great length as the lead case. But of equal significance is the civil appeal of Rajni Sanghi because it offers an alternative and competing solution to the family dispute sought to be settled by the arbitration award. The High Court of Delhi has set aside the award primarily because of orders passed by High Courts at Bombay as well as Rajasthan approving schemes of reconstruction and also the undertaking of A.K. Sanghi that he will withdraw his petition in Delhi High Court through which he had prayed for making the Award of the Arbitrator dated 3.12.1987 as rule of the Court. In this scenario, our task is also to find out whether the view taken by the Delhi High Court is correct or not and further whether order of remand by Division Bench of Rajasthan High Court under challenge by Rajni Sanghi is legally sustainable.

8. Since A.K. Sanghi is dead, Civil Appeal No. 2763 of 2002 has been pressed on behalf of his two sons namely Ajay Sanghi and Vijay Sanghi. On behalf of Ajay Sanghi, Senior Advocate Mr. Dhruv Mehta has forwarded elaborate submissions for contending that the judgment of the learned Single Judge as well as affirming judgment of the Delhi High Court under appeal have wrongly set aside the Award ignoring the provisions of Section 30 of the Arbitration Act, 1940 (hereinafter referred to as 'the Act'). As per his submissions the High Court has travelled beyond the permissible grounds for setting aside an Award, which cannot include an undertaking or conduct of a party recorded by the Rajasthan High Court after about seven years of making of the Award. He highlighted the legal position that as per Section 30 of the Act, an Award can be set aside only on one or more of the three grounds mentioned in Clause (a),(b) and (c). He has also contended that in this case misconduct by the Arbitrator cannot be a ground, for the additional reason that no notice of any alleged misconduct was served upon the Arbitrator which is required under the Delhi High Court rules. The other ground under clause (b) can also not arise because it is nobody's case that there was any order by the Court superseding the arbitration or holding the arbitration proceeding invalid under Section 35. So far as the third permissible ground is concerned, it has been submitted that there is no case made out that the Award has been improperly procured or is otherwise invalid. On behalf of other son of A.K. Sanghi, Mr. Anoop G. Chaudhari, Senior Advocate has also assailed the judgments of the Delhi High Court. According to him the allegations by Mr. M.K. Sanghi against the arbitrator in letter dated 20.11.1987 were noticed by the Single Judge and at one place the learned Single Judge described these accusations as "wild allegations". Mr. Chaudhari has further contended that Section 32 of the Act not only contains a bar to suits seeking decision upon the existence, effect or validity of the arbitration agreement or award but that Section contains a further prohibition that notwithstanding any law for the time being in force, no arbitration agreement or award can be enforced, set aside, amended, modified or in any way affected otherwise than as provided in the Act (emphasis supplied).

9. Section 32 of the Act reads as follows:-

"32. Bar to suits contesting arbitration agreement or award - Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be enforced, set aside, amended, modified or in any way affected otherwise than as provided in this Act."

According to Mr. Chaudhari if the schemes of settlement as ordered by Bombay High Court or Rajasthan High Court are allowed to come in the way of arbitration agreement or the award made by the Arbitrator, it shall amount to a disregard of the mandate of law in Section 32. The second contention of Mr. Chaudhari is that Delhi High Court had passed an interim order dated 16.3.1988 restraining the parties from transferring, parting with, alienating or leasing out the properties covered by the award of the Arbitrator including shares of the partnership and company businesses in any manner and therefore, M.K. Sanghi could not have proceeded with the company petition in Bombay to obtain a scheme of division of the

two units of Sanghi Motors at Bombay nor any scheme could have been approved by the Rajasthan High Court in Company Petition No. 6 of 1986 nor any undertaking of A.K. Sanghi could have been recorded therein. According to Mr. Chaudhari also, the allegations of misconduct could not have been gone into in absence of any notice to the Arbitrator. Lastly, according to Mr. Chaudhari belated objections to the award could not have been taken into consideration.

10. Learned Counsel for Uma Sanghi, widow of N.K. Sanghi has reversed Uma Sanghi's stance before the High Court and sought to support the award and assail the judgments of Delhi High Court on the grounds already noticed. He also opposed the family settlement and agreement dated 5.9.1994 recorded by the learned Single Judge of High Court of Rajasthan under which Uma Sanghi (N.K. Sanghi group) received benefits. But he defended and supported the other agreement dated 20.2.1995 in favour of Rajni Sanghi. According to him the latter agreement of February 1995 is in effect an arrangement between the family members of late N.K. Sanghi and the same will be honoured by Uma Sanghi and other heirs and legal representatives of N.K. Sanghi even if the award is held valid and restored.

11. On the other hand learned Senior Counsel Mr. Arvind P. Datar appearing for M.K. Sanghi group and Mr. Shyam Divan, Senior Advocate appearing for R.K. Sanghi group sought to strongly defend the judgments of Delhi High Court setting aside the award. According to Mr. Datar the award deals with immovable properties and therefore in terms of the Registration Act, 1908 requires registration and since that was not done, as per Section 49 of the Registration Act, the award shall not affect any immovable property or be received as evidence of any transaction affecting such property. He pointed out that immovable properties in lot No. 2 at serial Nos. 8 and 9 given to A.K. Sanghi Group and one workshop of Sanghi Motors in lot No. 3 allotted to R.K. Sanghi Group were illustrative of the fact that the award sought to transfer immovable properties to different persons without requiring further conveyance deeds and documents. However, the award towards the end, in paragraph 16 stipulates that all obligations, conveyances, deeds and documents (including transfers and assignments) required to be executed to implement the award shall be made and executed faithfully by each and every member of all groups within three months. This stipulation, in our view, fully meets the above noted grievance on the basis of the non-registration of award and more particularly when it is an arguable point, as contended by Mr. Mehta in reply that the period when an award was called for by the Court and remained under its custody may be excluded for the purpose of limitation on the ground that court's action shall not prejudice any of the parties. For this dictum Mr. Mehta placed reliance on judgment in the case of *Raj Kumar Dey and Ors. vs. Tarapada Dey and Ors*¹., However, it is not necessary to go into several other judgments cited on behalf of the parties on the effect of non-registration of an award which requires registration and as to when an award may not require registration, in view of somewhat different issue on which we propose to decide this case.

12. Mr. Datar pointed out that the main controversy between the parties is in respect of two properties, one UMR property in Rajasthan which is to be with R.K. Sanghi Group on account of payments made for that property under the Rajasthan settlement arrived in the

company case before the Single Judge in 1994. But that property, as per the award is to be with N.K. Sanghi Group. The other property is the workshop property of M/s. Sanghi Motors at Bombay which as per settlement by the Bombay High Court has gone to M.K. Sanghi Group whereas under the award it shall go to A.K. Sanghi Group. Mr. Datar pointed out that the learned Single Judge of Delhi High Court allowed several I.As including OPM No. 109 of 1989 filed by Sanghi Motors Private Limited, Bombay but in appeal before the Division Bench, Sanghi Motors Private Limited (Bombay) was not impleaded as a party and therefore no useful purpose will be served by interfering with the orders of the Delhi High Court rejecting the award when the same order of the learned Single Judge has attained finality qua M/s Sanghi Motors Pvt. Ltd., Bombay.

13. Mr. Datar has next contended that the Delhi High Court was bound by the undertaking recorded in the judgment of Company Judge of Rajasthan High Court. Under such undertaking which amounts to an injunction, as per submissions, the application of Mr. A.K. Sanghi for making the award a Rule of the Court under Section 17 of the Act required outright dismissal without going into the issue of validity of the award on grounds under Sections 30 and 33 of the Act. According to him the undertaking before the competent court of law, in the facts of the case, was sufficient to render the award unenforceable on the ground under clause (c) of Section 30 of the Act viz. "otherwise invalid". According to him the award was signed on 3.12.1987 and it dealt with Bombay properties which were then under the receiver appointed by the Bombay High Court. This also made the award invalid on the ground covered by clause (c) of Section 30 of the Act. Mr. Datar further submitted that both, A.K. Sanghi Group which is now propounding the award and R.K. Sanghi Group had preferred OM No. 23 of 1986 to challenge the Arbitration Agreement itself on grounds and allegations of facts which amounted to admission on their part as to the invalidity of the arbitration agreement and in such a situation their turning volte face and seeking to support the award after it was signed and filed under orders of the court inspite of their pending objections, cannot make the award good and enforceable at their instance unless it is held that their admissions in pleadings can be ignored for some good reasons. Mr. Datar next submitted that Section 34 of the Act gave an option to the parties to the Arbitration Agreement to obtain stay of the legal proceedings at Bombay or Rajasthan on account of Arbitration Agreement and if they chose not to get the legal proceedings stayed or even if they failed to do so, the effect of such legal proceedings cannot be ignored at the time of deciding, at the stage of Section 17, as to whether an order/decreed could be passed in terms of the award or not. According to the submissions, once at the stage of Section 17, the court is made aware of judgment of a competent court of law affecting the matter covered by the award, it would be proper and lawful for such court to set aside the award under clause (c) of Section 30 of the Act by holding that the award is "otherwise invalid". It was argued on the basis of Section 35 of the Act that the principle is salutary that in case there is no stay granted under Section 34 and if the conditions under Section 35 are met, further proceedings in a pending reference shall be invalid.

14. This principle appears to have been developed and generalized further. Mr. Datar has placed reliance upon judgment in the case of *Ram Prosad Surajmull vs. Mohan Lal*

*Lachminarain*², and in the case of *Sheobabu vs. Udit Narain and Another*³, The Calcutta judgment was rendered in the context of Indian Arbitration Act of 1899 but the principle enunciated therein is equally applicable to an award under the Arbitration Act, 1940. The principle is - “if the court has refused to stay an action or if the defendant has abstained from asking it to do so, the Court has seisin of the dispute and it is by its decision and by its decision alone, that the rights of the parties are settled.” This view was adopted on a larger proposition that the Courts will not allow their jurisdiction to be ousted. In simpler words, the proposition is that the courts’ decisions will not be overridden by an award arising out of an arbitration proceeding. In the Allahabad case, in somewhat similar situation as in the Calcutta case, the judgment of the Court under Specific Relief Act in a regular suit was held valid because the parties could not or did not take proper steps to suspend the regular suit. We find no legal or other infirmity in this proposition of law.

15. Our attention was drawn to judgment of Bombay High Court dated 30.06.1992 passed by a Division Bench in Appeal No.350 of 1992 preferred by A.K. Sanghi Group against order of the Company Judge dated 06.07.1989 to highlight that in paragraph 3 of the judgment, the Division Bench rejected the contention advanced on behalf of A.K. Sanghi Group and held that the companies are not parties to the arbitration proceedings and consequently the decree on the basis of award cannot bind the companies. Mr. Datar pointed out that A.K. Sanghi Group allowed the matter to attain finality and hence in the present appeals, the appellant A.K. Sanghi Group cannot be permitted to take the stand that the award will bind the companies. He also highlighted the fact that Bombay property under dispute is a property leased to M/s. Sanghi Motors and vests with A.K. Sanghi Group as a leasehold property and in view of law laid down in the case of *M/s. General Radio & Appliances Co. Ltd. v. M.A. Khader (dead) by LRs*⁴ and in the case of *Singer India Ltd. v. Chander Mohan Chadha*⁵ such leased property cannot be legally sublet or granted to another under assignment. That will be the effect if award is allowed to operate. On this ground also it has been submitted that the award suffers from patent illegality.

16. Mr. Gaurav Pachnanda, learned senior advocate appearing for Rajni Sanghi has submitted that Rajni Sanghi preferred Special Appeal No.24 of 1994 before the Division Bench of Rajasthan High Court against orders of Company Judge accepting the Scheme of Reconstruction-cum-Family Settlement because she wanted her specific share out of the family business allotted to M.K. Sanghi Group so that she and her children may enjoy their share separately. This was achieved by amended family settlement dated 20.02.1995. Although M.K. Sanghi had not signed the family settlement he took time to consider the developments and ultimately he withdrew his appeal which signifies that he also consented to the settlements. It was pointed out that A.K. Sanghi Group including his son Vijay Sanghi had acted upon the Scheme of Family Settlement and also derived benefits, but they subsequently developed ill designs and Vijay Sanghi got himself transposed as appellant in Company Appeal No.30 of 1994 preferred by M.K. Sanghi although the latter had applied to withdraw the appeal. It was argued that the Division Bench failed to notice that the only non-signatory to the Compromise Petition filed on 20.02.1995, i.e., M.K. Sanghi Group had later accepted the settlement/compromise and prayed for withdrawal of their appeal and this

showed that all the four groups had accepted the Terms of Settlement-cum-Family Arrangement. In such circumstances, according to learned counsel, the Division Bench should not have interfered with the order of the learned Single Judge and ought not to have allowed the appeals and remanded the matter to Single Judge vide impugned order dated 03.04.2002, on mere technicalities. He submitted that thereafter review filed by Rajni Sanghi was also erroneously dismissed on 26.08.2003.

17. Learned senior counsel placed reliance upon a judgment of this Court in the case of *Munshi Ram v. Banwari Lal (deceased)*⁶ in support of the proposition that a compromise between the parties even after filing of award by the arbitrators deserves to be respected and such compromise will be made a part of the decree which will be based upon the award as modified by the compromise. The Court held that the power to record such agreement or compromise was available to the court under the provisions of the Act because Section 41 makes the Civil Procedure Code applicable to the proceedings under the Act. The observation of the Court in paragraph 20 is of some significance where it was pointed out that ‘there is nothing in the Arbitration Act which disentitles the court from taking note of an agreement. Reliance was also placed upon judgment in the case of *Kale v. Deputy Director of Consolidation*⁷ to highlight the nature, effect and value of family arrangement under the Hindu Law. All the three Judges deciding this case were agreed on the relevant proposition that the object of family arrangement is to sink their differences and disputes and resolve their conflicting claims to buy peace of mind and bring about complete harmony and goodwill in the family. Paragraph 9 of the judgment deserves full respect and is extracted hereinafter :

“9. Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise *Kerr on Fraud* at p.364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus :

The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend. The object of the arrangement is to protect the family from long-drawn

litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term 'family' has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In Halsbury's Laws of England, Vol.17, Third Edition, at pp.215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made: A family arrangement is an agreement between members of the same family, intended to be generally or reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour. The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term 'family arrangement' is applied. Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements."

The legal principles enunciated above have not been disputed.

18. Before this Court all the parties appear to be in agreement over the limited issue that the properties given to widow Rajni Sanghi and her children should belong to them. On behalf of

Rajni Sanghi it has been reiterated that she undertakes to abide by her undertaking and liabilities under the amended Family Settlement dated 20.02.1995.

19. On behalf of R.K. Sanghi Group all the arguments advanced by Mr. Datar were adopted and thereafter Mr. Shyam Divan, learned senior advocate advanced his own arguments. He cited some judgments which give discretion to this Court to dismiss a civil appeal summarily even after grant of leave to appeal. According to Mr. Divan, the civil appeal of A.K. Sanghi Group deserves to be dismissed in limine considering how at one point of time or other all the groups including A.K. Sanghi group were opposed either to the arbitration agreement or to the award. He submits that the judgments rendered by Bombay High Court settling the business interests of all the groups in respect of business at Bombay and the judgment of Company Judge of High Court of Rajasthan disposing of Company Petition No.06 of 1986 in terms of Scheme of Reconstruction-cum-Family Settlement of 1994 followed by the amended family settlement before the Division Bench in 1995 deserve to be given a finality because the judgment of Division Bench of Bombay High Court is no longer under challenge and practically all the four groups had agreed to the family settlement made before the Rajasthan High Court. According to Mr. Divan, the Division Bench should have disposed of the appeal of Rajni Sanghi in terms of the compromise and revised family settlement and the other appeal preferred by M.K. Sanghi should have been dismissed because M.K. Sanghi had prayed for its withdrawal. Transposition of Vijay Sanghi should not have given him any advantage when originally he had not filed any appeal and had also taken advantage flowing to his father A.K. Sanghi and his group. He highlighted that the undertaking by the head of A.K. Sanghi group was a solemn undertaking as a head and karta between family members and the group should not have been permitted to resile from the undertaking whereunder they agreed not to seek enforcement of the award for which they had filed an application and which they agreed to withdraw. He has submitted that the family arrangement at Rajasthan was a well thought out and considered family arrangement arrived after more than six years of making of the award. Such choice of the parties should be given pre-eminence over award made by an arbitrator to which many of the family members had objections. It was also highlighted that under the Act of 1940, an award does not have the force of a decree as is the case with an award under the Arbitration and Conciliation Act 1996 and hence under the Act there is absolutely no legal impediment in the way of parties arriving at a settlement even after making of an award by the arbitrator. Referring to the amendments made in the Code of Civil Procedure such as introduction of Section 89 and provisions in the Family Courts Act it has been submitted that policy of law is in favour of settlement of dispute by agreement especially between members of a family. Mr. Divan highlighted provisions of Sections 14 and 17 of the Act to contend that an award need not be set aside if the parties, even post-award, agree for another settlement because in the 1940 Act the arbitrators are required to file the award only on the request of any party or upon direction by the court which in usual course, is required to be moved by one or the other party. Even judgment in terms of award can be passed only after rejection of application to set aside the award or after the time for making such application has expired. On the other hand, a judgment or order of a court has a different and higher sanctity. It shall bind the parties till they get rid of such order or judgment in accordance with law. He relied upon judgment in the case of *Oudh Commercial*

*Bank Ltd. v. Thakurain Bind Basni Kuer*⁸ in support of his submission that even a decree does not stand in the way of parties in arriving at a different settlement. In the context of power of Executing Court under Section 47 of the Code of Civil Procedure, the Privy Council in the aforesaid case held that the judgment-debtor and the decree-holder could enter into an agreement and bargain for time, in consideration of a reasonable rate of interest. It is permissible and such agreement can be accepted by the Executing Court without attracting the criticism that it has attempted to amend or vary the decree. Even in general terms, while considering the issue as to whether the parties could alter or vary a decree by consent, the Privy Council came to an opinion that the Civil Procedure Code contains no general restriction of the parties' liberty of contract with reference to their rights and obligations under the decree but such agreement may not be enforceable in all cases through execution proceedings and in that event the Executing Court will leave the beneficiary party to bring a separate suit upon the new contract/agreement.

20. Mr. Divan relied upon the case of *Noorali Babul Thanewala v. K.M.M. Shetty*⁹ to highlight the following passage in paragraph 11, 'when a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof.' He also referred to certain judgments in support of well recognized principle of law that a party cannot approbate and reprobate at the same time. Since the proposition is well settled, the judgments need not be adverted to. But it is important to note that he pointed out the relevant documents such as affidavit by R.K. Sanghi dated 10.10.1998 filed in D.B.Civil Special Appeal No.30 of 1994 in the High Court of Judicature for Rajasthan at Jodhpur to show that family settlement had been acted upon and considerable money was paid by Mr. R.K. Sanghi in terms of such settlement. Retirement deed of Vijay Sanghi dated 08.11.1994 and another retirement deed of wife as well as of daughter-in-law of A.K. Sanghi were also shown for the same purpose. On the basis of such undisputed materials he submitted that a family settlement already implemented deserves to be protected by setting aside the order of Division Bench challenged by Rajni Sanghi and the family settlements, original as well as amended, be accepted as valid and binding on the parties.

21. In reply Mr. Mehta and Mr. Chaudhari have reiterated their earlier stand and Mr. Mehta, as noted earlier, submitted that registration of the award was not necessary in law in view of its contents and even if it is required, a long period when the award was lying with the court may deserve to be excluded. According to him the judgment of Bombay High Court cannot invalidate the award because it is not a permissible ground under Section 30 of the Act nor that proceeding could have been stayed because the statutory powers available to a Company Judge cannot be available to an arbitrator. In support of binding effect of the family settlement made before the High Court of Rajasthan, it was submitted that the Division Bench has allowed the appeals and remitted the matter back to the learned Single Judge. On equity, Mr. Mehta contended that if award is upheld then also equity can be restored by ordering for refund of money for UMR property to R.K. Sanghi group with appropriate interest or even that building may be ordered to be with R.K. Sanghi group. A concession was offered by him on behalf of A.K. Sanghi group that the appellants of Civil Appeal

No.2763 of 2002 will be satisfied to have 50% of market value of the property under dispute at Mumbai in lieu of the said leasehold property. Lastly he replied that principle of impermissibility of approbate and reprobate at the same time is an equitable principle and therefore subject to statutory rights. In support of this proposition he placed reliance upon judgment in the case of *P.R. Deshpande v. Maruti Balaram Haibatti*¹⁰.

22. Mr. Chaudhari also reiterated that in view of the peculiar jurisdiction of the Company Judge the matter before the court could not have been referred to arbitration and that ousted the parties' option of seeking a stay under Section 34 of the Act. According to him if Section 34 is not applicable then Section 35 will also not be applicable. He pointed out that Section 35 is attracted only when legal proceeding before a court is upon the whole of the subject matter of the reference and when it is between all the parties to the reference and when notice thereof has been given to the arbitrators or umpire. According to him such conditions were not met in this case and therefore proceedings in the pending reference and the award resulting therefrom are not adversely affected or rendered invalid by virtue of Section 35 of the Act. He referred to case of *Union of India v. Om Prakash*¹¹ to support his submission that post-award conduct of a party cannot be relevant for rendering the award invalid. However this judgment is to an extent against this proposition because it holds that the term - 'otherwise invalid' - is wide enough to include all invalidity including that of the arbitral reference. This shows that 'otherwise invalid' is not controlled by the principle of ejusdem generis. To same effect is the judgment in the case of *M/s. Siddeshwari Cotton Mills (P) Ltd. v. Union of India*¹²

23. According to Mr. Chaudhari, non-impleadment of Sanghi Motors (Bombay) in the appeal before the Division Bench of Delhi High Court cannot have any adverse consequence because no objection was taken to such defect. According to him the company is not a necessary party because all the shareholders and directors of the company are parties and in the context of present dispute the presence of company is a mere formality. Lastly Mr. Chaudhari contended that under Section 17 of the Act there is no requirement of any obligation for making the award a rule of the court and therefore the undertaking of A.K. Sanghi to withdraw his such application cannot be of any consequence in law. On behalf of Rajni Sanghi it was submitted in reply that Rajni Sanghi would be satisfied if the order of remand is modified even partially and the modified family settlement of 1995 is accepted. It was made clear on her behalf that she has no interest in the 1994 agreement which benefitted the three groups and who have now to face the matter once again if the remand order is to stand.

24. In the light of aforesaid submissions and the entire facts and circumstances relating to this dispute between family belonging to four brothers, we are required to decide whether the award under the Act which is yet to be made a rule of the court deserves implementation or preference needs to be given to the settlements finalized by the judgment of Bombay High Court and the family settlements of 1994 and 1995 before the Rajasthan High Court which have been now put to peril by the order of remand impugned by Rajni Sanghi. In course of deciding this issue we are also required to decide another larger issue of significance as to

whether any good ground was available to Delhi High Court under the provisions of Section 30 of the Act for invalidating the award and for refusing to make it a rule of the court in exercise of power under Section 17 of the Act.

25. So far as the argument in favour of maintaining the award is concerned, we find that clause (c) of Section 30 does not attract the principle of *ejusdem generis* so far as the term 'otherwise invalid' is concerned. That ground for setting aside award is quite wide in amplitude and available to the concerned court if it finds that the award requires to be treated as invalid because on face of the things it runs counter to a valid law prohibiting such an award or when the subject matter of the award has been lawfully dealt with by a statutory authority or a court and it is no longer available for disposal in accordance with the award under consideration. Such a situation is only illustrative and has been enunciated by us in the light of facts obtaining in this case. When the Courts having jurisdiction were allowed to proceed and decide the properties available at Bombay and record a family arrangement in respect of other matters in a company proceeding before the Rajasthan High Court, the judgments and orders in these proceedings cannot be ignored or obliterated on account of pendency of an award still waiting to be made a rule of the court. In such a situation, in our view, the award has to be set aside on the ground that it is otherwise invalid on the date it is being considered for being made a rule of the court. Since this course of action is available and has been rightly adopted by the Delhi High Court, we do not feel necessary to examine the hypothetical question as to whether even in absence of any ground for setting aside such an award, could the court concerned refuse to make the award a rule of the court under Section 17 of the Act if it was confronted with a situation like the one on hand in this case. Such a question need not be answered in the present proceeding.

26. We have already referred to judgments highlighting the significance of family arrangement under Hindu Law and in light of such judgments and considering the scheme of the Act and provisions of Code of Civil Procedure we are satisfied that family arrangements made before the Rajasthan High Court in 1994 before the Company Judge and in 1995 before the Division Bench need to be protected and given pre-eminence over the award which is yet not made the rule of the court. The family arrangement was arrived at in spite of knowing the award for six years and obviously because the parties who are family members, were at loggerheads over the terms of the award. No doubt the family arrangements were initially made only on behalf of three groups who originally signed the agreements for themselves as well as on behalf of their families but the 4th group, i.e., M.K. Sanghi group later decided to go along with that arrangement by opting to withdraw its appeal. Hence we accept the submissions advanced by Mr. Datar, Mr. Pachnanda and Mr. Shyam Divan and hold that if parties settle their disputes amicably by an agreement, even post-award, such settlement/agreement will prevail in view of requirement of the Act that an award will acquire the status of a decree only when it is made a rule of the court after rejection of all objections. In that view of the matter there is no hindrance in law in upholding the family arrangements made before the High Court at Rajasthan as well as judgment of the Bombay High Court which has attained finality. They deserve to have pre-eminence over the award in question.

27. The act of A.K. Sanghi in not honouring his undertaking to withdraw his petition for making the award a rule of court and the attempt made by Vijay Sanghi to obstruct the scheme of reconstruction-cum-family settlement of 1994 by getting transposed as an appellant in Company Appeal No. 30 of 1994 when his father A.K. Sanghi had signed the settlement on behalf of his group, were impermissible conduct of approbate and reprobate on the part of A.K. Sanghi group which should not have been permitted. The status of the head of the family acting as a Karta under the traditional Hindu law deserves to be kept in mind in such a situation. The junior members of the family are bound by decisions of a Karta in matters of family business and property unless it can be pleaded and proved that the head of the family has acted fraudulently or for immoral purposes. We have not been shown any such case on behalf of Vijay Sanghi. In such a situation, ignoring the traditional Hindu law and the rights of the head of the family or Karta has put unnecessary burden not only on the larger family but also upon the courts.

28. We have examined the Division Bench judgment of the Rajasthan High Court under challenge by Rajni Sanghi and we find that the remand order is not on the basis of any defect in the agreements or supplementary agreements but on account of certain technical requirements which should have been ignored when the issues had been settled by all the stake holders by reaching amicable agreement. The companies of family of four brothers are almost like partnerships and when all were agreeable, interest of justice was best subserved by recognizing even the supplementary family settlement of 1995 in favour of Rajni Sanghi as well as the original family arrangement of 1994 accepted by the Company Judge. In that view of the matter the order of remand under challenge at the instance of Rajni Sanghi is set aside and both the family arrangements indicated above are affirmed. If any party fails to act as per those arrangements within three months, the aggrieved party will be free to initiate appropriate proceedings including those of contempt before the concerned High Court or seek execution of the agreements through other appropriate proceedings. Civil Appeal No.3687 of 2006 is allowed to the aforesaid extent and is disposed of accordingly.

29. In view of the discussions made above, Civil Appeal Nos.2763 of 2002 and Civil Appeal No.503 of 2001 are dismissed. In the facts of the case there shall be no order as to costs.

Judgment Referred.

¹(1987) 4 SCC 0398

²AIR 1921 Cal. 0770

³AIR 1914 All.0275

⁴AIR 1986 SC 1218

⁵(2004) 7 SCC 0001

⁶AIR 1962 SC 0903

⁷(1976) 3 SCC 0119

⁸AIR 1939 PC 0080

⁹(1990) 1 SCC 0259

10(1998) 6 SCC 0507

11(1976) 4 SCC 0032

12(1989) 2 SCC 0458