

# SUPREME COURT OF INDIA

Umesh Goel

Vs.

Himachal Pradesh Cooperative Group Housing Society Ltd.

C.A.No.7916 of 2009

(Fakkir Mohamed Ibrahim Kalifulla and C.Nagappan,JJ.,)

29.06.2016

## JUDGMENT

**Fakkir Mohamed Ibrahim Kalifulla,J.,**

1. An interesting but very important legal question arises for consideration in this appeal relating to interpretation of Section 69(3) of the Indian Partnership Act with reference to its applicability to Arbitral proceedings.

2. The facts are not in controversy which can be briefly stated as under: The respondent which is a Cooperative Group Housing Society invited tenders for construction of 102 dwelling units with basement at Plot No. 21 Sector 5, Dwarka New Delhi. The tenders were invited in May 1998. The appellant, an unregistered partnership firm submitted its bid in response to the said tender on 06.05.1998. The appellant was the successful bidder and the contract was awarded to the appellant at an estimated cost of Rs.9.80 crores. The appellant was issued a letter of intent. On 09.08.1998 the appellant submitted its first bill for the construction of the compound wall etc. The agreement for the construction of 102 dwelling units with basement was entered into between the appellant and the respondent on 02.02.1999. It is stated that there was some delay in getting the plan sanctioned, which according to the appellant, he was not responsible for the delay. A dispute arose as between the appellant and the respondent which necessitated the appellant to move the High Court of Delhi by way of an application under Section 9 of the Arbitration and Conciliation Act 1996 (for short “1996 Act” ) to restrain the respondent from dispossessing the appellant from the worksite till the work executed by the appellant is measured by the Commissioner to be appointed by the Court. It was filed on 22.05.2005. A Commissioner was also appointed by the High Court. The appellant filed another application under Section 9 of the 1996 Act to restrain the respondent from operating its bank accounts and from dispossessing the appellant on 29.01.2003.

3. With reference to the dispute which arose as between the appellant and the respondent an arbitrator/an advocate by name Smt. Sangeeta Tomar was appointed by the respondent to

adjudicate the dispute between them. As the appointment came to be made on 17.03.2003 by the respondent, though, the appellant earlier moved the High Court by way of an Arbitration Application No.145 of 2003 on 09.07.2003 under Section 11(5) of the 1996 Act for appointment of an independent arbitrator, the same was subsequently withdrawn. The appellant participated in the arbitration proceedings before the arbitrator appointed by the respondent. Claims and counter claims were made by the appellant as well as the respondent before the arbitrator. The arbitrator passed the award on 05.05.2005 wherein the claim of the appellant was allowed to the extent of Rs. 1,36,24,886.08 along with interest at the rate of 12% from 01.06.2002 till the date of the award and further interest from the date of award till its payment at the rate of 18% per annum. While resisting the claim of the appellant, the respondent did not specifically raise any plea under Section 69 of the Partnership Act.

4. The respondent challenged the award dated 05.05.2005 under Section 34 of the 1996 Act before the Delhi High Court which was registered as A.A. No.188 of 2005. The said application was filed on 02.08.2005. The respondent's application was dismissed by the learned Single Judge by an order dated 01.09.2005. The respondent filed Review Application No.26 of 2005 which was also dismissed by the learned Single Judge by an order dated 03.10.2005. As against the orders dated 01.09.2005 and 03.10.2005, the respondent preferred appeals in FAO (OS) No.376 of 2005 on 14.11.2005. Pending disposal of the appeals, an interim order was passed on 21.07.2006 directing the respondent to deposit 50% of the decretal amount within six weeks and by subsequent order dated 18.08.2006 the time was extended by another four weeks. By the impugned order dated 20.11.2007 the Division Bench having allowed the FAO(OS) No.376 of 2005, the appellant is before us.

5. We heard Mr. Dhruv Mehta, learned Senior Counsel for the appellant and Mr. Amarendra Saran, learned Senior Counsel for the respondent. Mr. Dhruv Mehta, learned Senior Counsel in his submissions after drawing our attention to Section 69 and in particular Section 69(3) of the Partnership Act contended that when sub sections (1) and (2) are read in to sub section (3) of Section 69, the expression "other proceedings" mentioned in the said sub section (3) should be with reference to other proceedings connected with a suit in a Court and cannot be read in isolation. The learned Senior Counsel contended that if it is read in that sense the expression "other proceedings" in sub section (3) can have no relevance nor referable to Arbitral proceedings in isolation. The learned Senior Counsel further contended that going by the plain reading of the Statute and if the golden rule of construction is applied, an arbitrator by himself is not a court for the purpose of Section 69 of the Statute. The learned Senior Counsel then submitted that there is a vast difference between an arbitrator and the Court, that though an arbitrator may exercise judicial powers, he does not derive such powers from the State but by the agreement of the parties under a contract and, therefore, he cannot be held to be a Court for the purpose of Section 69 of the Partnership Act. While referring to Section 36 of the 1996 Act, the learned Senior Counsel submitted that it is only a statutory fiction by which for the purpose of enforcement, the award is deemed to be a decree and it cannot be enlarged to an extent to mean that by virtue of the said award to be deemed as a decree, the arbitrator can be held to be a Court. Lastly, it was contended by him that in order to invoke Section 69(3), three mandatory conditions are required to be fulfilled, namely, that

(a) there should be a suit and the other proceedings should be intrinsically connected to the suit, (b) such suit should have been laid to enforce a right arising from the contract and (c) such a suit should have been filed in a Court of law.

6. As against the above submissions Mr. Saran, learned Senior Counsel for the respondent submitted that the expression “other proceedings” will include arbitral proceedings and that the foundation for it must only be based on a right in a contract. In support of the said submission, learned senior counsel contended that this Court has held while interpreting Section 14 of the Limitation Act that arbitral proceedings are to be treated on par with civil proceedings. The learned Senior Counsel also submitted that under Section 2(a) of the Interest Act, arbitral proceedings have been equated to regular suits and, therefore, the expression “other proceedings” in Section 69(3) of the Partnership Act should be held to include an Arbitral Proceeding on par with a suit. The learned counsel, therefore, contended that the arbitrator should be held to be a Court and the proceedings pending before it are to be treated as a suit and consequently other proceedings. By referring to Sections 35 and 36 of the 1996 Act where an award of the arbitrator has been equated to a decree of the Court and applicability of Civil Procedure Code for the purpose of execution has been prescribed, the learned Senior Counsel contended that the arbitral proceedings should be held to be civil proceedings before a Court.

7. Mr. Dhruv Mehta, learned Senior Counsel for the appellant relied upon the decisions reported in *Jagdish Chander Gupta v. Kajaria Traders (India) Ltd*<sup>1</sup>. *Kamal Pushp Enterprises v. D.R. Construction Co*<sup>2</sup>. *The Bharat Bank, Ltd., Delhi v. The Employees of the Bharat Bank Ltd., Delhi and the Bharat Bank Employees ’ Union, Delhi*<sup>3</sup> - *Firm Ashok Traders and another v. Gurumukh Das Saluja and others*<sup>4</sup> - *Sumtibai and Ors. v. Paras Finance Co. Regd. Partnership Firm, Beawer (Raj.) Through Mankanwar (Smt.) W/o Parasmal Chordia (Dead) and Ors*<sup>5</sup>.- *Panchu Gopal Bose v. Board of Trustees for Port of Calcutta* <sup>6</sup>- *M/s. Consolidated Engg. Enterprises v. Principal Secy. Irrigation Deptt. and Ors*<sup>7</sup>. *State of W.B. v. Sadan K. Bormal and Anr.*<sup>8</sup> - *Raj Kumar Khurana v. State of (NCT of Delhi) and Anr*<sup>9</sup>. - and *M/s. Indian Oil Corporation Limited Rep. by Its Chief LPG Manager (Engg.) S. Chandran v. M/s. Devi Constructions, Engineering Contractors & another*<sup>10</sup>- *Mr. Saran, learned Senior Counsel for the respondent relied upon the decisions reported in Firm Ashok Traders (supra), Delhi Development Authority v. Kochhar Construction Work and Anr*<sup>11</sup>. *Panchu Gopal Bose (supra) and P. Sarathy v. State Bank of India*<sup>12</sup> -

8. Having heard learned counsel for the appellant as well the respondent and having bestowed our serious consideration to the respective submissions, the various decisions relied upon and the provisions contained in the Partnership Act, the Interest Act, Civil Procedure Code and Arbitration Act, we are of the view that the submissions of Mr. Dhruv Mehta, learned Senior Counsel for the appellant merit acceptance.

9. To appreciate the respective submissions and in support of our conclusion, at the very outset Section 69 requires to be noted, which reads as under:

“69. Effect of non-registration.-(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the register of firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceedings to enforce a right arising from a contract, but shall not effect –

(a) The enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realize the property of an insolvent partner.

(4) This section shall not apply-

(a) to firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories, are situated in areas to which, by notification under section 56, this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, outside the Presidency-towns, is not of a kind specified in Schedule II to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.”

10. Though, some of the decisions which were cited before us dealt with Section 69(3) of the Partnership Act, in the instance we wish to analyze the said sub-section along with the other components of the said Section 69. When we read sub-section (3) of Section 69 carefully, we find that as rightly contended by Mr. Dhruv Mehta, learned Senior Counsel for the appellant, the provisions of sub-sections (1) and (2) have been impliedly incorporated in sub-section (3). When the opening set of expression in sub-section (3) states that the provisions of sub-sections (1) and (2) shall apply, there is no difficulty in accepting the said submission of learned Senior Counsel for the appellant that the entirety of the said two sub-sections should be held to be bodily lifted and incorporated in sub-section (3). It is difficult to state that any one part of sub-sections (1) and (2) alone should be held to be incorporated for the purpose

of sub-section (3). Therefore, we are convinced that when we read sub-section (3) it is imperative that all the ingredients contained in sub-sections (1) and (2) should be read into sub-section (3) and thereafter apply the said sub-section when such application is called for in any matter.

11. Once we steer clear of the said position it will be necessary to note what are the specific ingredients contained in sub-sections (1) and (2). When we read sub-section (1) of Section 69 the said sub-section primarily imposes a ban on any person as a partner of a firm from filing any suit to enforce a right arising from a contract or a right conferred under the Partnership Act in any Court by or on behalf of an unregistered firm or a person suing as a partner of a firm against the said firm or against any person alleged to be or to have been a partner in that firm. To put it in nut-shell the ban imposed under sub-section (1) of Section 69 is on any person in his capacity as the Partner of an unregistered firm against the said firm or any of its partners, in the matter of filing a suit to enforce a right arising from a contract or conferred by the provisions of the Partnership Act. In effect, the ban is in respect of filing a suit against that unregistered firm itself or any of its partners by way of a suit under a contract or under the Partnership Act. Under sub-section (2) the very same ban is imposed on an unregistered firm or on its behalf by any of its partners against any third party by way of a suit to enforce a right arising from a contract in any Court. A close reading of sub-Sections (1) and (2) therefore shows that while under sub-section (1) the ban is as against filing a suit in a Court by any person as a partner of an unregistered firm against the firm itself or any of its partner, under sub-section (2) such a ban in the same form of a suit in the Court will also operate against any third party at the instance of such an unregistered firm. The common feature in both the sub-sections are filing of a suit, in a Court for the enforcement of a right arising from a contract or conferred by the Partnership Act either on behalf of an unregistered firm or by the firm itself or by anyone representing as partners of such an unregistered firm. While under sub-section (1) the ban imposed would operate against the firm itself or any of its partners, under sub-section (2) the ban would operate against any third party.

12. The question for our consideration is by virtue of sub-section (3) whether the expression “other proceedings” contained therein will include Arbitral proceedings and can be equated to a suit filed in a Court and thereby the ban imposed against an unregistered firm can operate in the matter of arbitral proceedings. If sub-sections (1) and (2) are virtually lifted whole hog and incorporated in sub-section (3), it must be stated that it is not the mere ban that is imposed in sub-sections (1) and (2) that alone is contemplated for the application of sub-section (3). In other words, when the whole of the ingredients contained in sub-sections (1) and (2) are wholly incorporated in sub-section (3), the resultant position would be that the ban can operate in respect of an unregistered firm even relating to a set off or other proceedings only when such claim of set off or other proceedings are intrinsically connected with the suit that is pending in a Court. To put it differently, in order to invoke sub-section (3) of Section 69 and for the ban to operate either the firm should be an unregistered one or the person who wants to sue should be a partner of an unregistered firm, that its / his endeavour should be to file a suit in a Court, in which event even if it pertains to a claim of set off or in respect of ‘other proceedings’ connected with any right arising

from a contract or conferred by the Partnership Act which is sought to be enforced through a Court by way of a suit then and then alone the said sub-section can operate to its full extent.

13. As far as the construction of the said sub-section (3) of Section 69 is concerned, we are able to discern the above legal position without any scope of ambiguity. To be more precise, the condition precedent for the operation of ban under sub-section (3) is that the launching of a suit in a Court of law should be present and it should be by an unregistered firm or by a person claiming to be partner of an unregistered firm either to a claim for set off in the said suit or any other proceedings intrinsically connected with the said suit.

14. In the event of the above ingredients set out under sub-sections (1), (2) and (3) being fulfilled then and then alone the ban prescribed against an unregistered firm under Section 69(1), (2) and (3) would operate and not otherwise.

15. Keeping the above outcome of the legal position that can be derived from a reading of sub-sections (1), (2) and (3) of Section 69 in mind we can draw further conclusions by making specific reference to sub-clauses (a) and (b) of sub-section (3) as well as the exceptions set out in sub-clauses (a) and (b) of sub-section (4) as well. When under sub-section (3) which also relates to a ban concerning ‘other proceedings’, the law makers wanted to specifically exclude from such ban such of those proceedings which also likely to arise in a suit, but yet the imposition of ban of an unregistered firm need not be imposed. Keeping the said intent of the law makers in mind, when we read sub-clauses (a) and (b) of sub-section (3), it can be understood that even though such other proceedings may be for the enforcement of any right to sue but yet if it is for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realize the property of a dissolved firm, the same can be worked out by way of a suit in a Court or by way of other proceedings in that suit and the same will not be affected by the ban imposed under sub-section (3). Similarly, any steps initiated at the instance of an official assignee, a receiver or Court under the Presidency-Towns Insolvency Act of 1909 (3 of 1909) or the Provincial Insolvency Act of 1920 (5 of 1920) to realize the property of an insolvent partner in a pending suit of a Court also stand excluded from the ban imposed under sub-section (3). The specific exclusions contained in clauses (a) and (b) of sub-section (3) therefore makes the position clear to the effect that even though such proceedings may fall under the expression “other proceedings” and may be intrinsically connected with a suit in a Court, yet the ban would not operate against such proceedings.

16. When we read sub-section (4), the ban imposed under sub-sections (1), (2) and (3) will have no application to any of those proceedings set out in sub-clauses (a) and (b) of the said sub-section (4). A specific reference to sub-clause (b) of sub-section (4) disclose that in the last part of the said sub-clause it is specifically provided that other proceedings incidental to or arising from any suit or claim of set off not exceeding Rs. 100 in value under those specific statute referred to in the said sub-clause can also be launched without any ban being operated as provided under sub-sections (1), (2) and (3). The said part of sub-clause (b) of sub-section (4) thus gives a vivid picture as to the position that the ‘other proceeding’

specified in the said sub-section can only relate to a pending suit in a Court and not to any other different proceeding which can be categorized as ‘other proceedings’ .

17. We are thus able to arrive at a definite conclusion as to the scope and ambit of Section 69 in particular about Section 69(3). Having thus analyzed the provision in such minute details and its implication, we can now apply the said provision to the case on hand and find out whether Section 69(3) is attracted to the Arbitral Proceedings and the ultimate award passed therein by construing the same as falling under the expression “other proceedings” .

18. In the case on hand, the contract between the parties contained an Arbitration Clause. The respondent invoked the said clause and an Arbitrator came to be appointed. After the respondent filed its statement of claim, the appellant filed its reply and also its counter claim dated 30.08.2003. Before the Arbitrator, in the course of oral arguments, a faint attempt was made contending that, the appellant-firm being an unregistered one, by virtue of Section 69 of the Partnership Act, the proceedings insofar as the counter claim was concerned, the same was not maintainable and should be rejected. The Arbitrator took the correct view that Section 69 has no application to the proceedings of the Arbitrator and held that the objection of the respondent was not sustainable. The Arbitrator allowed the counter claim to the extent of Rs.1,36,24,886/- (Rupees One crore thirty six lacs twenty four thousand eight hundred eighty six only). When the award of the Arbitrator was challenged by the respondent under Section 34 of the Act, the very same objection was raised as a ground of attack. The learned Single Judge of the High Court also found no merit in the said contention and upheld the award of counter claim.

19. By the impugned judgment, the Division Bench in the appeal filed under Section 37 of the Act took a contrary view and held that the counter claim in an Arbitral Proceedings is covered by the expression “other proceedings” contained in Section 69(3) of the Partnership Act and the appellant being an unregistered firm at the relevant point of time was hit by the embargo contained therein and consequently the award of counter claim in the award as confirmed by the learned Judge was reversed as not justiciable by virtue of Section 69 of the Partnership Act.

20. Based on the close analysis of Section 69 in its different parts, we are able to discern and hold that in order to attract the said Section, first and foremost the pending proceeding must be a suit instituted in a Court and in that suit a claim of set off or other proceedings will also be barred by virtue of the provision set out in sub-sections (1) and (2) of Section 69 as specifically stipulated in sub-section (3) of the said Section. Having regard to the manner in which the expressions are couched in sub-section (3), a claim of set off or other proceedings cannot have independent existence. In other words, the foundation for the application of the said sub-section should be the initiation of a suit in which a claim of set off or other proceedings which intrinsically connected with the suit arise and not otherwise.

21. Under the Partnership Act, the expression “Court” is not defined. In Section 2(e) of the said Act though it is stated that the expressions used but not defined, the definition in the

Indian Contract Act, 1872 can be applied, in the Contract Act also there is no specific definition set out for the expression “Court” . However, we find a definition of the “Court” in Section 2(1)(e) of the 1996 Act, which reads as under:

“2. Definitions.-(1) In this Part, unless the context otherwise requires,-

(a)xxx xxx xxx

(b)xxx xxx xxx

(c)xxx xxx xxx

(d)xxx xxx xxx

(e) “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;”

22. Mr. Amrender Saran, learned Senior Counsel for the respondent in his submissions contended that under Section 36 of the 1996 Act since it has been provided that the award of an Arbitrator can be enforced under the Code of Civil Procedure in the same manner as if it were a decree of the Court, it should be held that the role played by the Arbitrator should also be deemed to be that of a Court and on that footing hold that Arbitral Proceedings are also akin to Court proceedings before the Court by equating the Arbitral Tribunal as a Court.

23. Having thus noted the facts involved in the case on hand and before dealing with the contentions of Mr. Saran, learned Senior Counsel for the respondent on the interpretation of Section 69(3), we wish to note the earliest decision on this very question dealt with in Jagdish Chander case (supra). Justice Hidayatullah, speaking for the Bench has made a critical analysis of this very provision, namely, Section 69(3) and has stated as under in paragraphs 7 and 9:

“7. Mr. Justice Naik asked the question that if all proceedings were to be excluded why was it not considered sufficient to speak of proceedings along with suits in sub-Sections (1) and (2) instead of framing a separate sub-section about proceedings and coupling “other proceeding” with “a claim of set-off? The question is a proper one to ask but the search for the answer in the scheme of the section itself gives the clue. The section things in terms of (a) suits and (b) claims of set-off which are in a sense of the nature of suits and (c) suits and other proceedings. The section first provides for exclusion of suits in sub-sections (1) and (2). Then it says that the same ban applies to a claim of set-off and other proceeding to enforce a right arising from a contract. Next it excludes the ban in respect of the right to sue (a) for the dissolution of a firm, (b) for accounts of a dissolved firm and (c) for the realization of the property of a dissolved firm. The emphasis in each case is on dissolution of the firm. Then follows a general exclusion of the section. The fourth sub-section says that the section as a whole, is not to apply to firms or to partners and firms which have no place of business in the territories of India or whose places of business are situated in

the territories of India but in areas to which Chapter VII is not to apply and to suits or claims of set-off not exceeding Rs.100 in value. Here there is no insistence on the dissolution of the firm. It is significant that in the latter part of clause (b) of that section the words are “or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim” and this clearly shows that the word “proceeding” is not limited to a proceeding in the nature of a suit or a claim of set-off. Sub-section (4) combines suits and a claim of set-off and then speaks of “any proceeding in execution” and “other proceeding incidental to or arising from any such suit or claim” as being outside the ban of the main section. It would hardly have been necessary to be so explicit if the words “other proceeding” in the main section had a meaning as restricted as is suggested by the respondent. It is possible that the draftsman wishing to make exceptions of different kinds in respect of suits, claims of set-off and other proceedings grouped suits in sub-sections (1) and (2), set-off and other proceedings in sub-section (3) made some special exceptions in respect of them in sub-section (3) in respect of dissolved firms and then viewed them all together in sub-section (4) providing for a complete exclusion of the section in respect of suits of particular classes. For convenience of drafting this scheme was probably followed and nothing can be spelled out from the manner in which the section is sub-divided.

9. In our judgment, the words “other proceeding” in sub-section (3) must receive their full meaning untrammelled by the words “a claim of set-off”. The latter words neither intend nor can be construed to cut down the generality of the words “other proceeding”. The sub-section provides for the application of the provisions of sub-sections (1) and (2) to claims of set-off and also to other proceedings of any kind which can properly be said to be for enforcement of any right arising from contract except those expressly mentioned as exceptions in sub-section (3) and sub-section (4).”

(Underlining is ours)

24. In the first blush, when we read paragraph 7, one is likely to gain an impression as though the expression ‘other proceedings’ is disjunctive of a suit as specifically prescribed in sub-sections (1) and (2) of Section 69. But on a deeper scrutiny of the judgment, we find that in the light of the special features involved in the said case, it was laid down that ‘other proceedings’ would be referable to Arbitration as well. We will right now note and state as to those intricate factors which weighed with the learned Judges to state the law in such terms. First and foremost, it will have to be noted that in the said case, the Arbitral proceedings arose under the Indian Arbitration Act of 1940 and in particular in relation to a proceeding which emanated under Section 8 of the said Act. Under Section 8 of the 1940 Act, the power of Court to appoint Arbitrator or umpire is specified. Sub-sections (1)(a) to (c) and (2) of Section 8 details the situations under which the said power of appointment of Arbitrator or umpire can be made. Under Section 2(c), the expression

‘Court’ is defined to mean a Civil Court having jurisdiction to decide the questions framing the subject matter of a suit excluding a Small Causes Court. Under the said definition, an exception is carved out even for a Small Causes Court to fall under the definition of Court when the said Court is called upon to exercise its jurisdiction in situations, which are set out in Section 21 of the Act.

25. The definition of ‘Court’ under Section 2(c) read along with Sections 8 and 21 of the 1940 Act, therefore, indicates that the proceedings initiated under the said Sections are virtually in the nature of a suit in a Civil Court having jurisdiction, though such proceedings are relating to initiation as well as superintendence of Arbitration proceedings such as appointment of an Arbitrator or umpire or inaction or neglect on the part of Arbitrator or umpire or the incapacity of the Arbitrator or umpire, death of an Arbitrator or umpire or even in situations where the agreement has not provided for or not intended to supply the vacancy or the parties or the Arbitrator fail to supply the vacancy or the parties or the Arbitrator who are required to appoint an umpire and they fail to carry out their obligation. Under Section 21 of the 1940 Act even in the absence of an agreement providing for Arbitration, by consent of all parties to any suit can seek for a reference to Arbitration before the judgment is pronounced. Equally a reference to Sections 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 43 and 47 of 1940 Act disclose that the whole scheme of the Act in effect invested the Civil Court and under certain specified situations even with the Small Causes Court to exercise all the powers that a Civil Court having jurisdiction in a civil suit *mutatis mutandis* in relation to an Arbitration apply, unlike the Arbitration and Conciliation Act of 1996 (hereinafter called the “1996 Act” ).

26. The scope and ambit of the power and jurisdiction of ‘Court’ defined under Section 2(e) of the 1996 Act is circumscribed to certain specified extent as set out in Sections 8, 9, 14, 27, 34, 36, 37, 39, 42, 43, 47, 48, 49, 50, 56, 58 and 59. A comparative consideration of the 1940 Act and 1996 Act disclose the extent of control and operation of a Court under the former Act was far more intensive and elaborate than the latter Act. The more significant distinction as between the 1940 Act and the 1996 Act is clear to the position that the former Act does not merely stop with the initiation and enforcement of an Arbitration and its award, but effectively provides for intervention at every stage of the Arbitral proceedings upto its final consideration and enforcement as if it were a regular civil suit, whereas under the 1996 Act, the scope of intervention is not that of a Civil Court as it could do in the matter of a suit. Such clear distinction could be discerned from the reading of the various provisions of both the Acts. Therefore, in the light of such distinctive features that prevail in respect of an Arbitral proceeding which emanated under the 1940 Act, this Court held in Jagdish Chander case (*supra*) to the effect that an Arbitral proceedings governed by 1940 Act would squarely fall under the category of ‘other proceedings’ as specified in Section 69(3) of the Partnership Act. To be more precise, in Jagdish Chander case (*supra*), in as much the initiation of the proceedings were under Section 8 of the 1940 Act before a Civil Court having jurisdiction to decide the question forming the subject matter of suit and the respondent therein being an unregistered Partnership Firm, the ingredients set out in Section

69(1) to (3) of the Partnership Act applied in all force and consequently held that the prohibition set out in the said Section squarely applied.

27. We only wish to add that though in the said decision, this Court did not specifically mention as to the requirement of pendency of a proceeding in the nature of a suit in a Civil Court as the basic ingredient to be satisfied as stipulated in sub-sections (1) & (2) of Section 69 in order to extend the specific prohibition even to ‘other proceedings’ under sub-section (3), this Court was fully aware of the fulfillment of those mandatory requirement having regard to the nature of proceedings that existed under the provisions of the 1940 Act. Therefore, our conclusion based on the interpretation of Section 69 on the whole as set out in paragraphs 12 to 17 are fully supported by the above decision. We have therefore no hesitation to hold that the ratio laid down in Jagdish Chander case (supra) does not in anyway conflict with the view which we have taken herein, having regard to the advent of the 1996 Act, under which the nature of Arbitration Proceedings underwent a sea change as compared to the 1940 Act, what is stated in Jagdish Chander case (supra) can have application in the special facts of that case and that it can have no application to a proceedings which emanated under the 1996 Act, for which the interpretation to be placed on Section 69(3) will have to be made independently with specific reference to the provisions of the 1996 Act, where the role of the Court is limited as noted earlier to the extent as specified in Sections 8, 9 etc.

28. Having thus noted the distinctive features in Jagdish Chander case (supra), we wish to refer to the subsequent decision of this Court reported in Kamal Pushp Enterprises (supra). The judgment and the ratio in Jagdish Chander (supra) was sought to be applied in all force in Kamal Pushp Enterprises (supra), but having noted the distinctive feature of Jagdish Chander (supra), this Court has explained the said judgment and held that it will have no application to a post Award situation. Some of the relevant portions of the judgment in Kamal Pushp Enterprises (supra) can be quoted to appreciate the ultimate conclusion which fully supports our view. The question posed for consideration has been noted as under:

“5. Mr. Sanjay Parikh, learned counsel for the appellant, contended that the Courts below ought to have sustained the objection of the appellant based upon Section 69 of the Partnership Act holding the proceedings to be barred on account of the respondent being an unregistered firm. Strong reliance was placed in this regard upon the decision of this Court reported in Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd [AIR 1964 SC 1882]; in addition to placing reliance upon some other decisions of the High Courts, to substantiate his claim...”

6. This Court ultimately construed the words “other proceedings” in sub-section (3) of Section 69 giving them their full meaning untrammelled by the words “a claim of set off, and held that the generality of the words “other proceedings” are not to be cut down by the latter words. The said case being one concerning an application before Court under Section 8(2) of the Arbitration Act, 1940 in the light of the arbitration agreement. this Court finally held that since the arbitration clause formed part of the agreement constituting the partnership the proceeding under

Section 8(2) was in fact to enforce a right which arose from a contract/agreement of parties.”

9. The prohibition contained in Section 69 is in respect of instituting a proceeding to enforce a right arising from a contract in any Court by an unregistered firm, and it had no application to the proceedings before an Arbitrator and that too when the reference to the Arbitrator was at the instance of the appellant itself. If the said bar engrafted in Section 69 is absolute in its terms and is destructive of any and every right arising under the contract itself and not confined merely to enforcement of a right arising from a contract by an unregistered firm by instituting a suit or other proceedings in Court only, it would become a jurisdictional issue in respect of the Arbitrators power, authority and competency itself, undermining thereby the legal efficacy of the very award, and consequently furnish a ground by itself to challenge the award when it is sought to be made a rule of Court. The Award in this case cannot either rightly or legitimately be said to be vitiated on account of the prohibition contained in Section 69 of the Partnership Act, 1932 since the same has no application to proceedings before an Arbitrator. At the stage of enforcement of the award by passing a decree in terms thereof what is enforced is the award itself which crystallises the rights of parties under the Indian Contract Act and the general law to be paid for the work executed and not any right arising only from the objectionable contract. Consequently, the post award proceedings cannot be considered by any means, to be a suit or other proceedings to enforce any rights arising under a contract. All the more so when, as in this case, at all stages the respondent was only on the defence and has not itself instituted any proceedings to enforce any rights of the nature prohibited under Section 69 of the Partnership Act, before any Court as such.”

(Emphasis added)

29. The above passages extracted from the case of Kamal Pushp Enterprises (supra), apart from explaining the principles laid down in Jagdish Chander case (supra), has thus held in categorical terms as to how Section 69 prohibition will have no application to the post award proceedings as they do not fall under the expression ‘other proceedings’ of the said section. This Court thus having already understood and explained Jagdish Chander case (supra) and reiterated the legal position on the application of Section 69(3) to the post award proceedings, which fully supports our conclusion in the case on hand, we need not dilate much on this issue.

30. Having reached the above definite conclusion on the application of Section 69(3) to the post award proceedings, when we consider the submissions of Mr. Amrender Saran, learned senior counsel for the respondent, the learned counsel, in the first place, contended that for the application of Section 69(3) of the Partnership Act to Arbitral proceedings, the foundation must be only based on a right in a contract. As far as the said contention is concerned, the same has already been dealt with by this Court in Kamal Pushp Enterprises (supra) wherein it is held as under:

" The Award in this case cannot either rightly or legitimately said to be vitiated on account of the prohibition contained in Section 69 of the partnership Act, 1932 since the same has no application to proceedings before an Arbitrator. At the stage of enforcement of the award by passing a decree in terms thereof what is enforced is the award itself which crystallise the rights of parties under the Indian Contract Act and the general law to be paid for the work executed and not any right arising only from the objectionable contract. '

(Emphasis added)

31. Therefore, the said contention of the learned senior counsel for the respondent has no force.

32. The learned senior counsel then contended that while interpreting Section 14 of the Limitation Act, it was held that Arbitration Proceedings are to be treated on par with civil proceedings. Though, in the first blush, the submission looks more attractive, on a deeper scrutiny it must be held that it is always well settled that a judgment can be a binding precedent on a question of law, which was canvassed before it and decided. Keeping the said principle in mind when we consider the said submission, we have clearly held as to how a reading of Section 69 as a whole does not permit of any interpretation that would cover Arbitral proceedings, de hors, filing of a suit in a Court and that too in respect of a right under a contract governed by the provisions of the Indian Partnership Act, especially after the coming into force of the 1996 Act and the proceedings governed by the special features contained in the said Act. Therefore, any interpretation made under the Limitation Act while construing Section 14 to treat Arbitral proceedings on par with civil proceedings cannot be applied to the case on hand. Further, the decision of this Court in Kamal Pushp having considered the application to Section 69(3) itself to Arbitral Proceedings and held that the same will not apply to a Post Award Proceedings, we do not find any merit in the said submission. Therefore, we are not able to apply the principles laid down in the decision reported in *M/s. Consolidated Engg. Enterprises (supra)* and *P. Sarathy (supra)* relied upon by the learned senior counsel for the respondent.

33. The next submission of Mr. Saran, learned Senior Counsel was again by relying upon Section 2(a) of the Interest Act. Under the said definition section, 'Court' has been defined to include a Tribunal and an Arbitrator. The learned senior counsel, therefore, contended that Arbitral Proceedings should be equated to a Court and consequently make Section 69(3), applicable to it as falling under the expression 'other proceedings'. If such a specific provision has been incorporated in the Partnership Act, there can be no difficulty in accepting the argument of the learned senior counsel for the respondent. In the absence of such a specific provision, it will not be appropriate to import the definition clause under Section 2(a) of the Interest Act to the Partnership Act in order to apply Section 69(3) of the Partnership Act. Therefore, we do not find any scope to countenance such a submission of the learned senior counsel for the respondent.

34. Lastly, it was contended by Mr. Saran, learned Senior Counsel that under Section 36 of the 1996 Act, an Award of the Arbitrator has been equated to decree of the Court for the purpose of execution. Under Section 35 of the 1996 Act, an Arbitral Award will be final and binding on the parties and persons claiming under them subject to the other provisions prescribed in the said part of the Act. Under Section 36 it is provided that where the time for making an application to set aside the arbitral award under Section 34 expired, or such application having been made and referred, the award can be enforced under the Code of Civil Procedure in the same manner as if it were a decree of the Court. When we consider the submission of the learned senior counsel for the respondent, at the very outset, it must be held that by referring to Sections 35 and 36, it is difficult to draw an inference that based on the deeming provision specifically meant for the enforcement and execution of an Award, the Arbitral Proceedings can be equated to a Civil Court proceedings. As rightly contended by Mr. Dhruv Mehta, learned senior counsel for the appellant, Section 36 only creates a statutory fiction which is limited for the purpose of enforcement of the Award. The deeming fiction is specifically restricted to treat the Award as a decree of a Court, exclusively for the purpose of execution, though as a matter of fact, it is only an Award of Arbitral proceeding. It is a settled proposition, that a statutory provision will have to be construed from the words that are expressly used and it is not for the Court to add or substitute any word to it. Therefore, going by Sections 35 and 36 it cannot be held that the entire Arbitral proceeding is a Civil Court proceedings for the purpose of applicability of Section 69(3) of the Partnership Act. In this context, we draw support from the decision of this Court reported in *Sadan K. Bormal (supra)*, paragraph 25 is relevant for our purpose which reads as under:

“25. So far as interpretation of a provision creating a legal fiction is concerned, it is trite that the Court must ascertain the purpose for which the fiction is created and having done so must assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. In construing a fiction it must not be extended beyond the purpose for which it is created or beyond the language of the Section by which it is created.. It cannot be extended by importing another fiction. These principles are well settled and it is not necessary for us to refer to the authorities on this subject. The principle has been succinctly stated by Lord Asquith in *East End Dwelling Co. Ltd. V. Finsbury Borough Council*, (1951) 2 ALL ER 587, when he observed :-

"If you are bid.d.en to treat an ima.ginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it-. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".”

35. We also draw support from the decision of this Court reported in *Paramjeet Singh Patheja Vs. ICDS Ltd.*<sup>13</sup> - paragraph 42 is relevant, which reads as under:

“42. The words “as if” demonstrate that award and decree or order are two different things. The legal fiction created is for the limited purpose of enforcement as a decree. The fiction is not intended to make it a decree for all purposes under all statutes, whether State or Central.”

36. Though the learned senior counsel for the appellant and the respondent referred to certain other decisions in support of their respective submissions, as we are fortified by our conclusion, based on the interpretation of Section 69 of the Partnership Act vis-a-vis the 1996 Act and the 1940 Act as well as supported by the decision in Jagdish Chander (supra) and Kamal Pushp Enterprises (supra), we do not find any necessity to refer to those decisions in detail. Having regard to our conclusion that Arbitral Proceedings will not come under the expression “other proceedings” of Section 69(3) of the Partnership Act, the ban imposed under the said Section 69 can have no application to Arbitral proceedings as well as the Arbitration Award. Therefore, the appeal stands allowed, the impugned judgment of the Division Bench is set aside and the judgment of the learned Single Judge stands restored. No costs.

<sup>1</sup>(1964) 8 SCR 0050

<sup>2</sup>(2000) 6 SCC 0659

<sup>3</sup>AIR 1950 SC 0188

<sup>4</sup>(2004) 3 SCC 0155

<sup>5</sup>(2007) 10 SCC 0082

<sup>6</sup>(1993) 4 SCC 338

<sup>7</sup>(2008) 6 SCALE 0748

<sup>8</sup>(2004) 6 SCC 0059

<sup>9</sup>(2009) 6 SCC 0072

<sup>10</sup>(2009) 2 Law Weekly 0849

<sup>11</sup>(1998) 8 SCC 0559

<sup>12</sup>(2000) 5 SCC 0355

<sup>13</sup>(2006) 13 SCC 0322