

O.P.Nos.80 of 2006 & 862 of 2007

In the High Court of Judicature at Madras

Reserved on : 16.10.2025	Delivered on: 23.10.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Original Petition Nos.80 of 2006 & 862 of 2007

M.Maher Dadha

...Petitioner in
O.P.No.80 of
2006

Vs

1.Mr.S.Mohanchand Dadha
2.Mr.M.Sardarmull Chordia
3.Mr.M.Ranjithmull Chordia

4.Mr.M.Mahendra Dadha
5.Mrs.Snehalatha Dadha

...Respondents in
O.P.No.80 of
2006

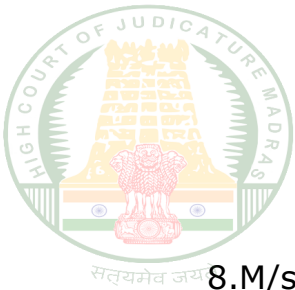
Apoorva Dadha

...Petitioner in
O.P.No.862 of
2007

Vs

1.Mr.S.Mohanchand Dadha
2.Mr.M.Saradarmull Chordia
3.Mr.M.Ranjithmull Chordia

4.Mr.M.Mahendra Dadha
5.Mrs.Snehalatha Dadha
6.Mr.Surendra Dadha
7.Mrs.Anjali Dadha



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8.M/s.Dadha Estates (P) Ltd.
Rep.by its Managing Director
Mr.M.Mahendra Dadha

9.M/s.Dadha Securi Lockers (P) Ltd.,
Rep. by its Director
Mr.M.Mahendra Dadha

10.M/s.L.Milapchand Dadha & Sons
(HUF) Rep.by its Kartha
Mr.M.Mahendra Dadha

11.M.Maher Dadha

12.Madhu Dadha

13.Ankush Dadha

14.M/s.Dadha Brothers Ltd.

15.Alle Chemicals (P) Ltd.,
Rep.by its Director
Mr.M.Mahendra Dadha/
Surendhar Dadha

...Respondents in
O.P.No.862 of
2007

PETITIONS under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the award dated 09.10.2005/ 10.10.2005 passed by the respondents 1 to 3 as erroneous, arbitrary and unjust.



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For Petitioner in
O.P.No.80 of 2006 &
R11 in
O.P.No.862 of 2007

: Mr.H.Karthik Seshadri for
M/s.Iyer and Thomas

For R4 & R5 in
O.P.No.80 of 2006 &
R4 to R7 in
O.P.No.862 of 2007

: Mr.Gautam S.Raman

COMMON ORDER

The subject matter of challenge in these petitions is the award dated 09.10.2005/10.10.2005 passed by the family elders, who were chosen by parties to arbitrate the dispute and resolve the same.

2. Thus, this Court is dealing with a case where the arbitrators forming part of the Arbitral Tribunal are not only lay persons, but are also the family elders, who consented to resolve the dispute between two brothers considering the overall interest of the family and its business.

3. O.P.No.80 of 2006 has been filed by the brother Mr.Mahendra Dadha whereas O.P.No.862 of 2007 has been filed by the son of the said Mr.Mahendra Dadha.



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4. Heard the learned counsel for the petitioner in O.P.No.80 of 2006 and the learned counsel appearing for respondents 4 and 5 in O.P.No.80 of 2006 and respondents 4 to 7 in O.P.No.862 of 2007.

5. The parties entered into an arbitration agreement on 10.5.2005 and decided to refer all their disputes pertaining to 5 companies/entities to three persons, who were none other than their family elders (uncles) to resolve the dispute and take a final decision. The manner, in which, the proceedings would have to be conducted, was provided under Clause 5 of the agreement and it was agreed that the award passed by the Arbitral Tribunal should be final and binding on the parties.

6. The petitioner in O.P.No.80 of 2006 namely Mr.M.Maher Dadha and the fourth respondent in both the petitions namely Mr.M.Mahendra Dadha are brothers. They constituted four companies namely M/s.Dadha Estates Private Limited; M/s.Dadha Securi Lockers Private Limited; M/s.Dadha Brothers Limited; and M/s.Alle Chemicals Private Limited. There was also an HUF described as M/s.L.Milapchand Dadha & Sons, for which, the said Mr.Mahendra Dadha was the Kartha.



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7. The disputes/differences arose between the parties namely the said Mr.Mahendra Dadha and the said Mr.Maher Dadha in relation to the affairs of the companies and their precarious financial status, which were managed by the said Mr.Mahendra Dadha and his family from the year 1993 till 2005. According to the said Mr.Maher Dadha, there were whimsical debit and credit entries in the books of accounts of those companies including huge borrowings and exorbitant expenses incurred in the management of the companies by the said Mr.Mahendra Dadha. In view of the same, the parties wanted the arbitrators to take a complete re-look of the books of accounts of the companies year wise, take cognizance of the earlier court proceedings, quantify the relevant and irrelevant expenses, ascertain the investments made, arrive at true and correct list of sundry creditors, who had funded huge sums for the existing business without any diversification or expansion and basically correct all the discrepancies to manage and run the companies effectively and profitably.

8. Even from the claim statement filed by the said Mr.Maher Dadha, it is clear that considering the status of the Arbitrators, who



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were family elders (uncles), there was a moral understanding between the parties in relation to individual group's personal expenses and life styles, which were independent of the joint business and which had been practiced over a long period.

9. For the claim statement filed by the said Mr.Maher Dadha, a defence statement was filed by the said Mr.Mahendra Dadha by way of letter dated 25.5.2005.

10. On considering the claim statement and the statement of defence and on considering the documents placed before it, the Arbitral Tribunal reached the following conclusions :

"Award

Now, We, the said Arbitrators having considered the matters in dispute after taken into consideration the representation made by respective parties and all documentary and oral evidence provided hereby given our Award as follows:

- 1. Arbitrators are of the opinion that equalization of the group investment is be completed on or before 30.4.2006.*
- 2. Once the equal investments in all*



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companies has been completed, equal number of directors represented by both groups have to appointed.

3. Dadha Securilockers: Once equilisation of investment is effected, arbitrators suggest that both groups may bid for 50% share held by the other group and the highest bidder will buy the shareholding of the other group and will become the absolute owner of the company with all its assets and liabilities.

4.M/s Dadha Brothers Ltd/M/s Alle Chemicals: It is understood that there are no business activity in these 2 concerns. All liabilities to business houses/institutions, liabilities relating to secured and unsecured loans, central and state tax liabilities, statutory liabilities have to be borne equally by both groups in the event of any remissions in respect of any of the liabilities, will be shared equally by both parties.

5. L.Milapchand Dadha & Sons HUF had large market borrowings and the trial balance drawn by and in the handwriting of Late Gulabchand Nimani in August 1993, Chief Accountant of both the groups and on perusing the statement, the arbitrators have arrived that a sum of Rs. 11291210/- was due to outside parties. This entire liability to a great extent has been discharged to the creditors by Shri Mahendra Dadha group and



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any pending amounts has to be settled by Shri Mahendra Group. The Arbitrators direct that this amount including interest at 18% p.a. amounting to Rs.5,90,96,340/- has to be borne equally by both the groups. The Arbitrators direct Shri.Maher Group to pay 50% of the amount viz Rs.. 2,95,48,170/-to Shri. Mahendra Group.

Total amount payable by Maher Group is as follows:

<i>(a) Towards clearing of his debts</i>	
<i>to the entities</i>	<i>Rs 1,08,09,136/-</i>
<i>(b) To equalize his deposits in the entities</i>	<i>Rs 1,30,43,255/-</i>
<i>(c) Amt payable as per Para 5 above</i>	<i>Rs 2,95,48,170/-</i>
	<i>-----</i>
	<i>Rs. 5,34,00,561/-</i>

This amount is be paid in five equal monthly instalment of Rs 1,06,80,112/- starting from 31.12.2005 upto 30.4.2006.

6. Dadha Estate P Ltd : Due to prolonged litigation with flat purchasers, builders etc. which have been mostly during 2004 and 2005 have been handled by Shri.Mahendra Dadha. During this period, Shri Mahendra Dadha has negotiated with M/s Eastlyn P Ltd and sold all the flats other than 2 retained flats and the flats owned by Readymoney to other constituents have been completed for delivery to the respective buyers. The entire account relating to sale of flats, expenditure relating to balance construction and amounts yet



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to be realized will form part of the accounts for the year ending 2004 and 2005.

Arbitrators feel that they cannot give any decision until they peruse the audited accounts and hence they have restricted themselves to all matters upto 31.3.2003.

7. Accounts for the 2 years have not been audited as Shri.Maher Dadha group have raised doubts on the genuineness of auditors in the court of law and auditors have refused to complete audit until both parties give a written letter of consent to audit the accounts.

The arbitrators direct both parties to issue letters to auditors to complete the audit for the year ending March 2004 and March 2005 for both companies viz. Dadha Estate P Ltd and M/s Dadha Securilockers P Ltd. Both parties to issue the letter to auditors within one week from the date of this award and Shri.Mahendra Group to ensure that audited accounts duly signed by auditors are received before 15th December 2005 and both the parties concerned shall equalize their accounts in the light of these balance sheets.

8. Flat occupied by Shri.Surendra Dadha and Smt.Anjali Dadha : The arbitrators feel that Shri. Mahendra Dadha group should have restrained from occupying when the matter was under arbitration. But having occupied the flat, they



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cannot enjoy the same free and hence the arbitrators fix a monthly rental of Rs.25,000/-, which has to be remitted to M/s Dadha Estates from the date of occupation on a regular basis until the date of equalization or upto 30th April 2006.

As directed above, on equilisation of investment by both the groups in all the concerns by 30.4.2006, both the flats i.e. one occupied by Shri.Surendra Dadha and the other vacant will be available in the hands of the company and at that time, both the groups who will be equally represented on the Board of Directors of M/s Dadha Estates P Ltd may take suitable decision in respect of these flats. The 2 flats may be purchased by both the parties or sold to any other outside party at prevailing market price. The amount so realized by M/s Dadha Estates P Ltd can be utilized to discharge the liability equally.

The arbitrators direct Mahendra Group that M/s Dadha Estates should not allow that the other flat is neither occupied nor encumbered until equalization is completed.

9. The arbitrators direct both the groups to withdraw all the cases filed against each other relating to the business of the above mentioned 5 companies and against each other with immediate effect.



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10. Due to litigation in the court between both the groups in the matter of M/s Dadha Estates P Ltd resulted in substantial losses to M/s DEPL in terms of delay in completion of building, delay in payments from flat owners etc.

Shri.Mahendra Dadha informs that this has resulted in a loss of Rs.115 lacs to M/s DDPL. Shri. Maher Dadha has his own point of view.

Arbitrators feel that this fight has resulted into substantial loss to the company and has to be borne by the company."

11. Aggrieved by the award, these petitions came to be filed before this Court.

12. Submissions were made by the learned counsel appearing on behalf of the said Mr.Maher Dadha - petitioner in O.P.No.80 of 2006 & 11th respondent in O.P.No.862 of 2007 and the learned counsel appearing for respondents 4 and 5 in O.P.No.80 of 2006 and respondents 4 to 7 in O.P.No.862 of 2007. None of the other parties contested these cases. In fact, none appears for the petitioner in O.P.No.862 of 2007.



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13. Eventually, the fight is between Maher Dadha Group and Mahendra Dadha Group. Therefore, the decision taken in O.P.No.80 of 2006 will bind all the parties and it will equally apply to the other petition filed in O.P.No. 862 of 2007.

14. This Court has carefully considered the submissions of both the learned counsel for the petitioner in O.P.No.80 of 2006 & 11th respondent in O.P.No.862 of 2007 and the learned counsel for respondents 4 and 5 in O.P.No.80 of 2006 and respondents 4 to 7 in O.P.No.862 of 2007 and perused the materials available on record and more particularly the impugned award.

15. The primary ground that was raised on the side of the said Mr.M.Maher Dadha is that he was not given sufficient opportunity by the Arbitral Tribunal and that therefore, there is a violation of the principles of natural justice. The other ground raised is that the award is not supported by proper reasoning and is a non speaking award and that in spite of specific objections raised by the petitioner, the Arbitral Tribunal presumed the correctness of unaudited accounts statements, which go to the root of the matter. Thus, it was contended that the



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award passed by the Arbitral Tribunal is unintelligible and suffers from inadequacy since no proper reasons have been assigned by the Arbitral Tribunal while arriving at the conclusions.

16. In the facts of the present case, this Court must keep in mind the fact that the Arbitral Tribunal that was constituted should not be understood from a commercial parlance, that the three Arbitrators were the elders in the family, that they were lay persons, that the parties agreed to approach them to find a solution only due to the belief and respect that they had in the Arbitrators and that they were none other than the uncles of both the said Mr.Maher Dadha and the said Mr.M.Mahendra Dadha.

17. In ***M/s.State Industries Promotion Corporation of Tamil Nadu Ltd. Vs. M/s.RPP Infra Projects Ltd. [O.P.No.494 of 2018 dated 06.10.2025]***, I have dealt with the manner, in which, an award passed by a lay person must be construed by a Court exercising its jurisdiction under Section 34 of the Act. The relevant portions in the said order read thus :



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"30. This Court must also keep in mind the fact that the Arbitrator in this case is not a man possessed with a legally trained mind and the Arbitrator was an Engineer. While dealing with such awards passed by a layperson, this Court must keep in mind the caution given by the Apex Court in Konkan Railway Corporation Limited vs. Chenab Bridge Project Undertaking reported in 2023 (9) SCC 85 and Paragraph 28 is extracted hereunder:

28. The conclusion [Chenab Bridge Project v. Konkan Railway Corpn. Ltd., 2022 SCC OnLine Bom 3148] of the Division Bench of the High Court that the award is liable to be set aside on the ground of perversity is incorrect, as it overlooks the principle laid down in Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] wherein this Court held : (Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , SCC pp. 75-76, paras 32-33)

'32. A good working test of perversity is contained in two judgments. In STO v. Gopi Nath & Sons [STO v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] , it was held : (SCC p. 317, para 7)

'7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies



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logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law'.

In Kuldeep Singh v. Commr. of Police [Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429], it was held : (SCC p. 14, para 10)

'10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.'

33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure



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up in quality to a trained legal mind would not be held to be invalid on this score [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:

'General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong'. It is very important to bear this in mind when awards of lay arbitrators are challenged.]'

(emphasis supplied)

31. In Paragraph 28, there is reference to Footnote No.21 and the said footnote is extracted hereunder:

'21. Very often an arbitrator is a lay person not necessarily trained in law, Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:

'General, you have a sound head, and a good heart, take courage and you will do very well, in



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your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong'.

It is very important to bear this in mind when awards of lay arbitrators are challenged.

32. It is clear from the above that when this Court is dealing with an Award passed by a lay person, the Court should not expect that the reasoning and the Award passed will measure up in quality to a trained legal mind. Such Awards can only be assessed by looking into the reasons assigned and to test as to whether it is a possible view based on the evidence relied upon by the Arbitrator and if such Award is found to be substantially right, although the reasons assigned may not measure up to what is expected from a legally trained mind, but however, satisfies the triple test employed in Dyna Technologies Private Limited vs. Crompton Greaves Limited reported in 2019 20 SCC 1."



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18. In the said order, it has been held that where an award is passed by a lay person, the Court should not expect that the reasoning and the award passed will measure up any quality to a trained legal mind. Such awards can be assessed only by looking into the reasons assigned and to test as to whether it is a possible view based on the evidence relied upon by the Arbitrators, the Court must only see if the determination is substantially right although the reasons may not measure up to such a quality as is expected of a legally trained mind.

19. In the case in hand, apart from the fact that the Arbitrators were lay persons, they also happened to be family elders and they were not looking at both the parties as two opponents fighting for their case and they viewed the two groups as a part of their own family. Their only intention was to find a solution to the problem. Hence, while dealing with the award passed by the Arbitral Tribunal, this Court must only see as to whether the Arbitral Tribunal had applied their mind and reached a conclusion, which, according to them would serve the best interest of the family. Unless this Court finds that the award suffers from absolute perversity or manifest illegality, there is no question of interfering with the award by applying the normal yardstick that is



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applied for hardcore commercial contracts.

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20. Keeping the above in mind, this Court carefully went through the award passed by the Arbitral Tribunal along with various communications that took place between the parties on the one hand and the Arbitrators on the other hand. The proceedings had taken place in a very informal manner like how the family elders call the disputing parties in their family, hear them and try to give them a solution to patch up the differences.

21. On carefully reading the award, it is quite apparent that both parties had submitted various documents expressing their views as well as the audited balance sheets relating to the said M/s.Dadha Securi Lockers Private Limited and the said M/s.Dadha Estates Private Limited upto the financial year ending 31.3.2003. The Arbitral Tribunal found that both parties were having 50% shareholding in the said two companies and this was not disputed by both sides. The audited accounts were submitted upto 31.3.2003 in respect of the above two companies.



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22. With respect to the other two companies namely the said M/s.Dadha Brothers Limited and the said M/s.Alle Chemicals Private Limited and as well as the HUF namely L.Milapchand Dadha & Sons, the audited accounts were not available and the trial balance statements were submitted to the Arbitral Tribunal. The Arbitral Tribunal had also taken into consideration the earlier proceedings between the parties before the Company Law Board wherein a Chartered Accountant Firm was appointed to go into the records of the said companies including M/s.Pokhran Investments Private Limited, which belongs to the said Mr.M.Maher Dadha.

23. The Arbitral Tribunal, on going through all the documents, concluded that there must be equalization of investments since both groups had 50% share and once that process was completed, one of the groups could buy the shareholding from the other group and become the absolute owner of the company with all its assets and liabilities. While undertaking the exercise, the Arbitral Tribunal also took into account the related dispute on the flats that were constructed and came to the conclusion that the remaining two flats could be purchased by both parties or they could be sold to any other outsider



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at the prevailing market price and that the sale consideration could be realized by the company and utilized for discharge of the liability.

24. The conclusions arrived at by the Arbitral Tribunal are already extracted supra. As stated above, the award passed by the Arbitral Tribunal is not in a format as is expected in an award passed by a legally trained mind. It does not talk about the issues framed. There is no formal marking of any documents. There is no reference to recording of evidence and the findings of the Arbitral Tribunal are also not very specific. The award broadly covers the issue between the parties and tries to find a solution.

25. The first issue that was raised on the side of the said Mr.M.Maher Dadha was that he was not given sufficient opportunity to put forth his case. To substantiate the same, the letter addressed by him dated 19.5.2005 was brought to the notice of this Court. In this letter, he raised a lot of issues on the accounts that were submitted on the side of the said Mr.Mahendra Dadha and sought for an opportunity to explain the details and thereafter to pronounce the final award.



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26. The said Mr.Mahendra Dadha also issued a letter dated 25.5.2005 to the Arbitrators by putting forth his stand and informed that he would make further submissions in due course. He further informed that he looked forward for the proceedings by assuring full cooperation. Thereafter, on 05.6.2005, the said Mr.M.Maher Dadha once again addressed a detailed letter to the Arbitrators and sought for certain additional details by assigning reasons. These communications were going on for some time. Ultimately, the said Mr.M.Maher Dadha, through letter dated 29.9.2005, after getting necessary particulars along with the letter issued by the Arbitral Tribunal, specifically sought for an opportunity to confirm or deny the statements of isolated accounts, which were forwarded to him and requested the Arbitral Tribunal not to pass the final award before 10.10.2005. This was the first time a representation was made by him after receiving necessary documents from the Arbitral Tribunal.

27. But, the Arbitrators, through letter dated 29.9.2005 (on the same date), directed the said Mr.Maher Dadha to be present during the meeting on 03.10.2005. On receipt of this letter, the said Mr.Maher Dadha replied on 01.10.2005 stating that he was not in a



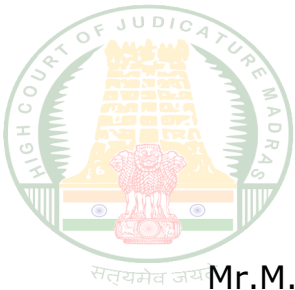
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position to reach Madras on 03.10.2005 and hence, requested the Arbitral Tribunal to reschedule the date. But, within a couple of days i.e. on 09.10.2005/10.10.2005, the final award came to be passed by the Arbitral Tribunal.

28. As was observed supra, many communications took place between the parties and the said Mr.M.Maher Dadha had also attended some of the meetings. However, the most crucial hearing should have been the one pursuant to the letter dated 29.9.2005. The reason is that only through this letter, the said Mr.M.Maher Dadha informed that he received xerox copies of the trial balances of three companies and that he had a lot to say on those documents. He also wanted the Arbitral Tribunal to give one opportunity to explain his stand on the documents served and also requested the other group to submit the details of all the accounts for the period from 1994 to 2005. He specifically requested the Arbitral Tribunal not to pass any award before 10.10.2005.

29. Vide letter dated 29.9.2005, when the Arbitral Tribunal fixed the date for hearing on 03.10.2005 and also informed the said



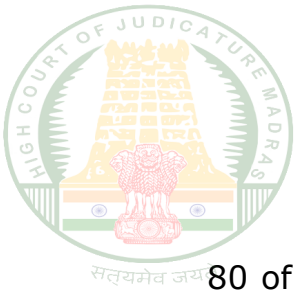
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Mr.M.Maher Dadha that his presence would be required on 4th and 5th of October 2005 for further clarifications, the petitioner informed through letter dated 01.10.2005 that he would not be able to attend the meeting on 03.10.2005 and requested the Arbitral Tribunal to reschedule the meeting from 05.10.2005. But, the Arbitral Tribunal did not respond to this request and the final award came to be passed on 09.10.2005/10.10.2005.

30. At the time of testing the award, as has been stated supra, this Court will bear in mind the standard that has to be applied while dealing with the award passed by lay persons and more particularly when they also happened to be the family elders. However, whatever may be the composition of the Arbitral Tribunal namely a legally trained mind or lay person or family elders, following the principles of natural justice is non negotiable. If the award is passed without affording an opportunity, it will fall foul of Section 34(2)(a)(iii) of the Act.

31. In the case in hand, the award passed by the Arbitral Tribunal has to be necessarily interfered since the petitioner in O.P.No.

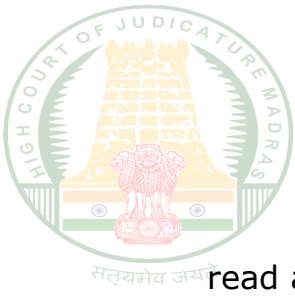


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80 of 2006 was not given an opportunity to present his case at a very crucial stage of the proceedings. Vide letter dated 01.10.2005, the petitioner in O.P.No.80 of 2006 specifically requested for rescheduling the meeting from 05.10.2005. However, for the letter dated 01.10.2005, he did not receive any communication from the Arbitral Tribunal and the final award itself came to be passed on 09.10.2005/ 10.10.2005. This certainly amounts to violation of the principles of natural justice.

32. The award can be held to be in conflict with the Public Policy of India, if it has been passed in violation of the principles of natural justice. A learned Single Judge of the Delhi High Court in ***NHAI Vs. Unitech NCC (JV) [OMP(Comm).No.23 of 2017 dated 30.5.2025]*** had an occasion to deal with the scope of Section 34 of the Act after considering all the earlier judgments. The principles that were culled out in paragraph 13 of the said order dated 30.5.2025 were relied upon by me in a common order dated ***08.10.2025*** in ***Arbitration O.P. (Com.Div.) Nos.257 of 2021 and 209 of 2022 [M/s.Prime Store, Rep. by its Partner Mr.S.Kaarthi & Others. Vs. Sugam Vanijya Holdings (P) Limited]*** in paragraph 14, which



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read as hereunder :

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"14. A learned Single Judge of the Delhi High Court in a recent judgment in NHAI Vs. UNITECH – NCC (JV) [O.M.P.(COMM) No.23 of 2017 dated 30.5.2025] took into consideration all the earlier judgments on the point. Therefore, it is not necessary for this Court to burden this order by considering every other judgment that was cited before this Court and extracting the relevant paragraphs. It will suffice if the relevant tests set out in the said judgment of the Delhi High Court are extracted, which read as hereunder :

'13. The principles that emerge From the decisions cited earlier, the following principles emerge:

(i) An arbitral award cannot be interfered with on grounds not envisaged by Section 34(2) or (3) of the 1996 Act.

(ii) Section 34 jurisdiction is not appellate. Interference with arbitral awards is generally proscribed, and is to be limited to rare and exceptional cases.

(iii) Interference on the ground that another, more appropriate and perhaps better, view, different from that adopted by the arbitrator, is possible, is impermissible.

(iv) There can be no interference with factual findings of an arbitral tribunal, unless they are



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perverse. A possible view by the arbitrator, on the facts, has to be respected. The arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon.

(v) "Perversity" exists where

(a) the arbitral tribunal ignores or excludes relevant material, or

(b) the arbitral tribunal takes into consideration irrelevant material, or

(c) the finding is so outrageously in defiance of logic as to suffer from the vice of irrationality.

(vi) If there is no evidence, or the evidence is thoroughly unreliable in the sense that no reasonable person would act on it, there is perversity. Where there is some acceptable evidence on record, on which the arbitral tribunal relies, the conclusion would not be perverse.

(vii) The Section 34 Court cannot look into the merits of the dispute.

(viii) An award is in conflict with the public policy of India if it

(a) is patently violative of a statutory provision, or

(b) reflects an approach by the arbitral tribunal which is not judicial, or

(c) has been passed in violation of the principles of natural justice, or

(d) is patently illegal, which would include a



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case in which

(i) the award is in patent contravention of applicable substantive law, or

(ii) the award patently breaches the 1996 Act, or

(iii) the award militates against the interests of the nation, or

(iv) the award is shocking to the judicial conscience, or

(v) the award ignores the specific terms of the contract, which would not include a case of mere erroneous contractual interpretation, unless the error of interpretation was fundamental, as in Ssangyong Engineering, which resulted in the award being contrary to the "most basic notions of justice", which shocked the judicial conscience, in which the arbitral tribunal substituted a clause in the contract with another.

(ix) The Court cannot interfere with an arbitral award on the ground that it does not do justice, in the opinion of the Court, as that would require examination of the merits of the dispute, which is proscribed.

(x) Infraction of fundamental policy of Indian law includes a law meant to serve public interest or public good. Mere infraction of the municipal laws of India does not render the award violative of the fundamental policy of Indian law.



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(xi) An arbitral award infracts the fundamental policy of Indian law if it contravenes all or any of the fundamental principles which provide a basis for administration of justice and enforcement of law in the country. This would include, for example,

(a) violation of the principles of natural justice,

(b) disregarding orders of precedentially superior Courts, or their binding effect, or

(c) violating laws linked to public good or public interest.

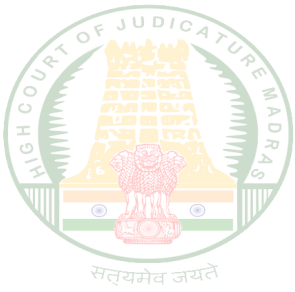
(xii) "Justice" is nothing more or less than exact conformity to some obligatory law.

(xiii) "Morality" includes agreements which cannot be enforced given the prevailing mores of the day. That said, an arbitral award can be set aside on the ground that it is contrary to the most basic concepts of morality only if it shocks the judicial conscience of the Court.

(xiv) An unreasoned award is patently illegal.

(xv) In the matter of interpretation of contractual covenants by the arbitral tribunal, the following principles apply:

(a) An interpretation which is completely unacceptable, in that it is one which no fair-minded or reasonable person would take, merits interference. If the arbitrator adopts a view which is not a possible view, it merits interference. An



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impossible view is one which no reasonable body of persons could possibly have taken.

(b) The arbitral tribunal, being a creature of the contract, cannot travel beyond it.

(c) An arbitral tribunal cannot rewrite the contract, or substitute one clause with another.

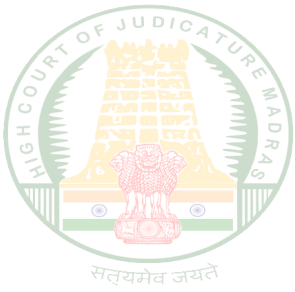
(d) An arbitral tribunal cannot foist, on a party, a covenant which is not to be found in the contract and is not binding on it.

(e) An arbitral tribunal cannot proceed ex debito justitiae, de hors the contract.

(f) The arbitral tribunal must also take into account the usages of trade applicable to the transaction, while interpreting the contract.

(g) An arbitrator has the jurisdiction to interpret a contract having regards to its terms and conditions, conduct of the parties including correspondences exchanged, circumstances of the case, the manner in which the parties worked out the contract, and pleadings of the parties. Thus viewed, if the interpretation accorded by the arbitrator to the contract is based on a possible view, the Court would not interfere.

(h) An unexpressed term can also be read into an agreement if such a term was always and obviously intended by the parties thereto. It must be a term which goes without saying, which is necessary to give business efficacy to the contract



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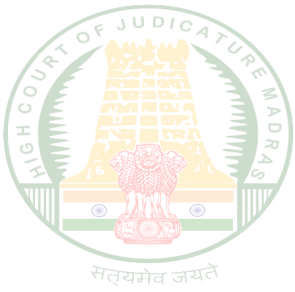
and which, although tacit, forms part of the contract. It must, however,

(a) be just and equitable,

(b) be necessary to give business efficacy to the contract, in that, if the contract is effective without it, the term will not be implied,

(c) be obvious, in that it "goes without saying", (d) be capable of clear expression, and (e) not contradict any term of the contract'."

33. In the light of the above discussions, this Court has to necessarily interfere with the award passed by the Arbitral Tribunal only on the ground that the petitioner in O.P.No.80 of 2006 namely the said Mr.M.Maher Dadha was not provided with sufficient opportunity to present his case at the most crucial stage of the proceedings. Hence, there has been a violation of the principles of natural justice. Accordingly, the award dated 09.10.2005/10.10.2005 is liable to be interfered under Section 34(2)(a)(iii) and also under Section 34(2)(b(ii) of the Act.



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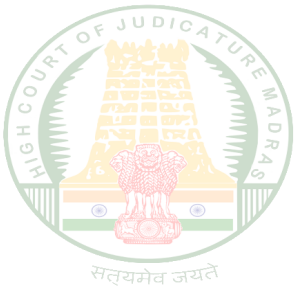
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34. In the result, the award dated 09.10.2005/10.10.2005 is set aside. O.P.No.80 of 2006 stands allowed. In view of the order passed in O.P.No.80 of 2006, O.P.No.862 of 2007 stands closed. If the parties so desire, they are permitted to go before the same Arbitral Tribunal. The Arbitrators, being the elders of the family, can give an opportunity to both parties and take a decision keeping in mind the overall interest of the family.

23.10.2025

Index : Yes
Neutral Citation : Yes

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