

**Sushil Kumar Gupta Vs. Anil Kumar Gupta and Others**

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**Court :** Delhi

**Decided On :** Sep-17-1990

**Reported in :** 43(1991)DLT241

**Judge :** P.K. Bahri, J.

**Acts :** [Trusts Act, 1882](#) - Sections 51 and 66; [Arbitration Act, 1940](#) - Sections 15 and 30; [Partnership Act, 1932](#) - Sections 37, 42, 46 and 48; Partnership Act, 1890 - Sections 14, 15, 29, 32, 37, 38, 39, 42, 48 and 55

**Appeal No. :** Suit No. 1754A fo 1988 and I.A.S. Nos. 7558, 7559 of 1988; 1987, 3802 and 2326 of 1989

**Appellant :** Sushil Kumar Gupta

**Respondent :** Anil Kumar Gupta and Others

**Advocate for Def. :** Shashi Vansh Bahadur,; Ishwar Sahai, ; Ms. Tasneem Ahmadi

**Advocate for Pet/Ap. :** B.K. Aggarwal, Sr. Adv

**Judgement :**

1. Vide letter dated June 12, 1988, the sole arbitrator, Mr. Justice Jaswant Singh (retired Judge, Supreme Court) had sent the award dated June 8, 1988 along with the proceedings to this Court. Notice of filing of the award was issued to all the

parties and all the parties have filed objection petitions which are now being disposed of by this judgment.

2. A partnership firm known as M/s. Deoki Nandan & Sons owned various immovable properties and other assets. This firm was in existence since 1967 but on death of Hanuman Prasad, the head of the family on December 8, 1972, a partnership deed dated December 25, 1972 was executed in between his sons viz., Atul Kumar Gupta (predecessor-in-interest of respondents 2 to 5). Anil Kumar Gupta (respondent No. 1), Sushil Kumar Gupta (petitioner) and Smt. Sudha Gupta (respondent No. 6), widow of pre-deceased son Shri Krishan Kumar Gupta. The said partnership deed is Ex. P.W.1 / 1 (existing at pages 174-177 of the Arbitration file). Cls. 13 and 14 of the partnership deed which are reproduced in the award were to the following effect, as they are very material for deciding the various points arising in the objection petitions:

'13. That the partnership shall not be dissolved on account of retirement or death of any party. In case of retirement of a party, he/she shall cease to have any title to or right in the firm's name and goodwill of the business, including tenancy right, quota rights and licenses which thereupon shall belong exclusively to the remaining parties. In case of death of a party, his/her legal heirs would be entitled to the share of the deceased party and may be admitted to the partnership by the consent of all the remaining parties hereto to the extent of the share of the deceased party.'

' 14. That all disputes and difference arising in between the parties as well as the determination of share accruing to the retiring or deceased party and the manner in which such share is to be reimbursed to the said retiring partner or the legal heirs of the deceased party shall be referred to arbitration and settled according to the provisions of the Arbitration Act. '

3. Atul Kumar Gupta had died on September 14, 1983. The remaining partners viz., Sushil Kumar Gupta and Smt. Sudha Gupta refused to admit respondents 2 to 5, heirs of Atul to the partnership. It was evident from Cl. 13 above that they could be admitted into partnership only with the consent of all the remaining partners. On or about November 7, 1983, an application under S. 20 of the

Arbitration Act was given by respondents 2 to 5. Initially the parties agreed to refer their disputes and differences to Mr. Justice Shiv Narain Shankar, a retired Judge of this Court vide Court's order dated December 5, 1983. But thereafter the arbitrator returned the reference expressing his inability to continue with the proceedings. The parties then made a joint application to this Court on November 14, 1985 praying that the disputes be referred to a retired Judge of the Supreme Court for arbitration. The relevant clauses of the aforesaid agreement are as follows as they have been referred to during the course of arguments repeatedly:

'1 The matter regarding the ascertainment of the assets and liabilities as on 14-9-83 and again on the date of the execution of this agreement and the mode and manner of distribution of the assets and liabilities of DNS and 1, Tughlak Lane, New Delhi be referred to an Arbitrator;

2. The parties have agreed amongst themselves that the property 1, Tughlak Lane, New Delhi (whether forming part of the assets of DNS or not) be divided equally amongst the four parties physically with separate titles, with power to the Arbitrator to direct the sale of the property if the physical division is not possible/ equitable.'

4. The High Court thus referred the aforesaid disputes for arbitration to the present arbitrator and it was agreed by all the parties that the proceedings already carried out by the previous arbitrator shall also be taken into consideration. The parties also were co-owners of property, 1, Tughlak Lane, New Delhi. The dispute with regard to that property was also referred to the arbitrator. After the pleadings were filed before the arbitrator, the arbitrator framed the following eight issues:

'1. What were the assets and liabilities of the firm, M/ s. Deoki Nandan & Sons on 14-9-83 and 11-11-1985? (O.P. on parties)

2. Is Section 37 of the Partnership Act applicable to the instant case; if so, what is its effect on the case (O.P. on respondents 2 to 5)?

3. In case it is held that S. 37 of the Partnership Act is applicable to the instant case, can't the election of the option exercisable under the Section be deferred till

the accounts are taken (O.P. petitioner and respondent No. 6)?

4. Are the legal representatives of Shri Atul Kumar Gupta only entitled to reimbursement for the share of Shri Atul Kumar Gupta in the firm M/ s. Deoki Nandan and Sons as on 14-9-1983 and not thereafter? (O.P. on the petitioner and respondent No. 6).

5. Which of the stocks and shares of the firm M/s. Deoki Nandan and Sons are held by which party? (O.P. on the parties).

6. How much expenditure has been incurred by Shri Sushil Kumar Gupta (petitioner) and Sint. Sudha Gupta (respondent No. 6) on electric charges, water charges, property tax etc. and to which account is same debitable?

7. Whether equal physical division of the property namely 1, Tughlak Lane, New Delhi amongst four parties with separate titles is possible/ equitable? If not, in what manner it can be best sold/disposed of? (Onus on parties).

8. To what relief, if any, are the parties entitled? (O.P. on the parties).

5. In the award, the arbitrator then reproduced the arguments advanced before him by counsel for the parties and thereafter he proceeded to record his findings on the aforesaid issues. Pages 13 to 20 of the award pertain to the said findings to which I shall make reference while dealing with the objection petitions. I will at first deal with the objections filed by respondents 2 to 5.

I.As. 1987 and 3802 of 1989:

6. I. A. 1987/ 89 are the objections filed by respondents 2, 4 and 5 and I.A. 3802/89 are the similar objections filed by respondent No. 3 separately. At first the learned counsel for respondents 2 to 5 has contended that the arbitrator committed error of law apparent on the face of the award in giving the finding that respondents, 2 to 5 were entitled to have their share from the partnership assets in the shape of money and not in specie and that they were entitled only to the value of the assets of the partnership as it existed on September 14, 1983, the day on which their predecessor-in-interest had died.

7. The learned counsel has urged that ill law in view of S. 48 of the Partnership Act, all the assets of the partnership ought to have been converted into money by selling those assets by public auction and then the said money should have been distributed amongst the parties according to their share. He has also contended that if the arbitrator was of the opinion that immovable property could be divided in specie and as has been done in respect of the remaining parties, he had no right not to give immovable property in specie to respondents 2 to 5 according to their share and thus the arbitrator has committed gross errors of law in giving the money only to respondents 2 to 5 and also only on the value of the assets as they existed on September 14, 1983 and not at the time he proceeded to divide the assets. He has argued that any appreciation in the value of the assets due to passage of time till they were divided should have been accrued for the benefit of all the parties and not for the benefit of other parties to the exclusion of respondents 2 to 5. The counsel has also cited a number of judgments in support of his contention to which I will make reference in the, later part of the judgment.

8. The learned counsel appearing for the petitioner and respondent No. 6 have on the other hand controverted these arguments by urging that the terms of the partnership deed and the terms of reference made to the arbitrator clearly visualise that the respondents 2 to 5 were to be given their share in money as it existed on the date of death of their predecessor, i.e., September 14, 1993 and the discretion was given to the arbitrator to devise the mode and manner of distribution of the assets and the discretion exercised by the arbitrator in giving the money as share of respondents 2 to 5 cannot be questioned. They have urged that in law, it was not incumbent upon the arbitrator to have given in specie the immovable property to respondents 2 to 5 and moreover the terms of the partnership deed reproduced in the award itself clearly show that the partnership was not to be considered dissolved on the death of one of the partners and heirs of the deceased partner if not admitted as partner were to be reimbursed their share and the partnership was to continue to be in existence, to be carried on by the other partners. They have also referred to a number of Judgments in support of the contentions.

9. Before I deal with the aforesaid contention. I may refer to the judgments which laid down the scope of the Court for interfering with the award of the arbitrator.

10 . One of the earliest judgments on the subject was given by House of Lords in 1923 AC 480: AIR 1923 PC 66, Champsey Bharai and Co. v. Jivraj Balloo Spinning and Weaving Co. Ltd. It was laid down that an award of arbitration can be set aside on the ground of error of law on the face of the award only when in the award or in a document incorporated in it, as for instance a note appended by the arbitrator stating the reasons for his decision, there is found some legal proposition which is the basis of the award and which is erroneous. The statement of law given in the case of Hodgkinson v. Fernie (1857) 3 CB (NS) 189 was reproduced in this judgment which stated to the following effect :

'The law has for many years been settled and remains so at this day, that, where a cause or matters in a difference are referred to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final judge of all questions both of law and of fact. The only exception to that rule, are cases where the award is the result of corruption or fraud and one other, which though it is to be regretted is now, I think, firmly established viz., where the question of law necessarily the face of the award, or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted. I think, it may be considered as established.'

11. The Supreme Court in the case of Union of India v. Bungo Steel Furniture Pvt, Ltd, : [1967]1SCR324 Has reiterated Me same principle of law. In Allen Berry & Co. v. Union of India, : [1971]3SCR282 , it was laid down that as the parties themselves choose their own arbitrator, they cannot, when the award is good on the face of it, object to the decision either upon the law or the facts. thereforee, even when the arbitrator commits a mistake either in law or in fact in determining the matter referred to him but such mistake does not appear on the face of the award or in a document appended to or incorporated in it so as to form part of it, the award will neither be remitted nor set aside notwithstanding the mistake.

12. Reference was made to N. Chellappan v. Secy., Kerala State Electricity Board, : [1975]2SCR811 wherein it was observed that 'umpire as sole arbitrator was not

bound to give a reasoned award and if in passing the award he makes a mistake of law or of fact, that is no ground for challenging the validity of the award. It is only when a proposition of law is stated in the award and which is the basis of the award and that is erroneous, that the award can be set aside or remitted on the ground of error of law apparent on the face of record. An error of law on the face of the award means that you can find in the award or a document actually incorporated thereto, as for in-stance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. The Court has no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence on the record for the purpose of finding out whether or not the arbitrator has committed an error of law.'

13. Reliance was also placed on the ratio laid down in *Municipal Corpn. of Delhi v. M/s. Jagan Nath Ashok Kumar*, : [1988]1SCR180 to the effect that such reasonableness of the reasons given by an arbitrator in making his award cannot be challenged. It was opined that appraisement of evidence by the arbitrator is ordinarily never a matter which the Court questions and considers. The parties have forum must be conceded the power -of appraisement of the evidence. It was held that the arbitrator is the sole judge of the quality as well as quantity of evidence and it will not be for the Court to take upon itself the task of being a judge of the evidence before the arbitrator. It may be possible that on the same evidence, the Court might have arrived at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground in our view for setting aside the award of an arbitrator.

14. In *M/s. Sudarsan Trading Co. v. Govt. of Kerala*, : [1989]1SCR665 , it was observed that once there is no dispute as to the contract, then what is the interpretation of the contract is a matter for the arbitrator and on which the Court cannot substitute its own decision. It was held that it is not open to the Court to probe the mental process of the arbitrator and speculate where no reasons are given by the arbitrator as to what impelled the arbitrator to arrive at his conclusion. This judgment also reproduced the same principles of law as have been laid down in the earlier judgments noted above.

15. In a recent judgment, the five Judges Bench of the Supreme Court in Raipur Development Authority v. M/s. Chokhamal Contractors, has held that it is not the requirement of law that the arbitrator must give reasons in support of his findings and the award is not liable to be remitted or set aside on the ground that the arbitrator has not given reasons in support of his findings. Giving of reasons is not a principle of any rule of natural justice which has to be complied with by the arbitrator. In M/s. Hind Builders v. Union of India, : [1990]2SCR638 , the Supreme Court has again reiterated the law that in case there are two views possible in respect of certain clauses of the contract and that the arbitrator acting upon a particular interpretation, the Court has no jurisdiction to interfere with the view of the arbitrator. As laid down in Dandasi Sahu v. State of Orissa, : 1970 CriLJ1369 , the arbitrator is only required to mention in the award that he has referred to and considered all the documents and evidence before him, no matter whether he relies on them or ultimately discards them from consideration,

16. Counsel for Anil Kumar Gupta has cited Jivarajbhai Ujamshi Sheth v. Chintamanrao Balaji, : [1964]5SCR480 which laid down that it is not open to the Court to speculate where no reasons are given by the arbitrator as to what impelled the arbitrator to arrive at this conclusion. It was held that on the assumption that the arbitrator must have arrived at his conclusion by a certain process of reasoning, the Court cannot proceed to determine whether the conclusion is wrong or right as it is not open to the Court to attempt to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of the award.

17. In answering issue No. 4, the arbitrator has recorded his finding as below:

'On a fair and reasonable construction of the aforementioned instrument of partnership (Exit P.W. I / 1) dated December 25,1972 and in view of the observations of the Humble Supreme Court of India in Addanki Narayanappa v. Bhaskara Krishtappa, : [1966]3SCR400 ; Khushal Khemgar Shah v. Mrs. Khorshed Banu Dadiba Boatwala, : [1970]3SCR689 and Lindley on Partnership (12th Edition) and what is contained in para 10 of the statement of claim filed before me by respondents 2 to 5, I hold that on refusal of Sushil Kumar Gupta and



Sint. Sudha Gupta to admit Atul's legal representatives to the partnership, the latter i.e., Atul's legal representatives became entitled to be reimbursed for Atul's 1/4th share in terms of money representing the value of the immovable and moveable properties belonging to the firm, as they existed on September 14, 1983 after satisfying the liabilities as provided in the relevant provisions of S. 48 of Partnership Act and deduction of the amount already paid to them from time to time pursuant to my direction dated April, 1986.

The amount thus payable to the legal representatives of Atul together with interest at 6% per annum in view of the written option exercised by them through their learned counsel. Shri Ishwar Sahai, on March 8, 1998, would be quantified by me hereinafter.'

18. Mr. Ishwar Sahai, learned counsel for respondents 2 to 5 has taken me through the two judgments of the Supreme Court referred to above and has vehemently argued that no such legal proposition has been laid down in the said two judgments that respondents 2 to 5 could have been given their share only in the shape of money and not in specie. He has also argued that the observations given in the Book, 'Lindley on Partnership' also do not lay down the proposition that only share in money could have been given in a case of the type presented before the Arbitrator.

19. On the other hand, learned counsel for the petitioner and respondent No. 6 have contended that it was within the discretion of the arbitrator to decide as to in what mode and manner, he was to distribute the assets and liabilities and keeping in view particularly the clause of the partnership deed already enumerated above, the arbitrator could come to the conclusion that respondents 2 to 5 who are legal heirs of Atul Kumar, deceased partner, should be given their shares in money than in specie and that finding of the arbitrator is not open to questioning by the Court as the Court is not to go into the mental process of the arbitrator by which he reached the said finding. It is pointed out by them that the reasons given in support of this finding by the arbitrator are not detailed one. The arbitrator after referring to the aforesaid judgments and Lindley on Partnership and also after referring to para 10 of the statement of claims and the provisions of Partnership Deed had come to

the conclusion that they should be reimbursed their share in the shape of money. So it cannot be said that the arbitrator has based his conclusion on any particular judgment of the Supreme Court exclusively or anything said particularly in the book, 'Lindley on Partnership'. They have pointed out that even in law where it is provided in the partnership deed that the partnership was not to be dissolved on the death of a partner, the legal heirs of the deceased partner could be only given their share in money after evaluating the share of the deceased at the time of his death. They have further pointed out that even the architect of respondents 2 to 5 had given the report evaluating the estate of the deceased on the date of death of Atul Kumar.

20. Now coming to the provisions of the Partnership Act, at first under S. 42 of the Partnership Act it is provided that 'subject to contract between the partners, a firm is dissolved -- (c) by death of a partner., It is evident that this particular provision is subject to the contract between the partners. Where the contract between the partners contemplates expressly or impliedly that the death of a partner would not result in dissolution of the partnership firm, the said term in the contract is to be given effect to superseding the provision contained in S. 42(c). In the present case, it is clearly provided in the partnership deed that the death of a partner would not result in dissolution of the partnership firm. If that is so, it cannot be urged that the arbitrator should have treated the firm as -dissolved on the death of one of the partners. If the firm, was to be continued by the remaining partners, it is not understood how the arbitrator could have given directions for selling all the assets of the partnership in open auction and distributed the money to the parties according to their shares. The only fair and reasonable view which could be taken by the arbitrator and which the arbitrator has taken in the present case was that the value of the assets should be ascertained in order to reimburse the heirs of the deceased partner in the shape of money. It is evident that for settling the accounts of the respondents 2 to 5 and to determine as to what share in money they are entitled, the provisions of S. 48 of the Partnership Act have to be followed which prescribe at first for calculating the losses, deficiencies of capital and other liabilities and that is why it is almost a settled law that for making distribution of the assets between the partners of the dissolved firm or otherwise, the provisions of S. 48 must be followed. Section 46 of the Partnership Act lays down that on the

dissolution of a firm every partner or his representative is entitled as against all other partners or their representatives to have the property of the firm applied in payment of the debts and liabilities of the firm and to have the surplus distributed among the partners or their representatives according to their rights. This provision has to be strictly followed when the firm is dissolved but the principle underlying this provision has also to be followed where the firm is not to be dissolved and share of the outgoing partner is to be determined. But it does not lead to any - inference that for separating the share of 'e heirs of the deceased partner in a situation where the firm is not to be considered dissolved, the Immovable properties of the partnership have to be put to auction. If this inference is drawn, it would give go by to the terms of the partnership agreed upon by the parties that on the death of a particular partner, the firm would not be deemed to be dissolved meaning thereby that the partnership firm has to remain in existence and carry on the business of the partnership despite the fact that a particular partner has died and that would be possible only if assets of the firm remain intact and are not disposed of by holding public auction or by effecting sale of those assets.

21. Lindley on Partnership (12th Edition) as well as 15h Edition in Chapter 26 dealt with the consequences as regards the surviving partners on the death of a partner. It also laid down at page 739 of the 15th Edition that subject to any agreement between the partners, every partnership is dissolved as regards all the partners on the death of any partner and unless all the partners have agreed to the contrary when one of them dies, his executors have no right to become partners with the surviving partners nor to interfere with the partnership business, the executors of the deceased represent him for all purposes of account, and, unless restrained by special agreement, they have the power by bringing an action to have the affairs of the partnership wound up in a manner which is generally ruinous to the other partners.

22. So, it is clear that if there is no agreement to the contrary, the death of a partner will result in the dissolution of firm but as already noticed above, in the present case, there is an agreement to the contrary between the partners recorded in the partnership deed itself that the partnership shall not stand dissolved on the death of a partner. At page 741, it is observed in this book that:

'In the absence of an express agreement to that effect, the surviving partners have no right to take the share of the deceased partner at a valuation, or to have it ascertained in any other manner than by a conversion of the partnership assets into money by a sale. And if the partnership assets have increased in value between the date of death and the date of sale, the surviving partners cannot claim the increase as their own to the exclusion of the deceased partner's estate.'

23. So the legal position is quite clear that unless there is an express agreement to the contrary, on the death of a partner, the partnership stands dissolved and the assets of the partnership have to be sold and money so realised is to be distributed amongst the parties according to their share but the position would be different if there is an agreement to the contrary as in the present case. The counsel for respondents 2 to 5 has placed reliance on (1981) 3 All ER 232, Barclays Bank Trust Co. v. Bluff. The facts of the said case in brief were that the father carried on a farming business with his son on terms that they were to share the profits equally under a partnership at will. The father died in 1972 and accordingly the partnership was dissolved at the date of his death. But the son continued to carry on the farming business and entered into negotiations with the father's executor for the purchase of the father's share of the partnership business but no settlement was reached. The aggregate net value of the partnership assets at the date of the father's death was f 41,500 but had since increased to in excess of 1,00,000. The executor issued a summons seeking, inter alia, a declaration that in the event of the executor electing under S. 42(l) of the Partnership Act, 1890 (Section 37 of the Indian Partnership Act is similarly worded) for payment of interest, the executor would not thereby deprive the estate of the right to receive that part of the proceeds of a sale of partnership assets, which was attributable to the increase in the value of the assets between the father's death and the sale of the assets. Under S. 42 of the English Partnership Act, if a member of a partnership died and the surviving partners carried on the partnership business with its capital or assets pending final settlement of accounts, then in the absence, of any agreement to the contrary, the estate had the option of receiving either that share of the profits made since the dissolution which the court found to be attributable to the use of the deceased partner's share of the assets or interest at the rate of 5% per annum on that share of the assets. It was contended by the son

that the profits made by the partnership since it was dissolved by the father's death included the increase in the value of the partnership assets occurring since the dissolution and that the executor had by certain letters during the negotiations made an election under S. 42 of the Act to take interest at 5% per annum in lieu of share of profits made since the dissolution and that as a consequence of such election, the father's estate was no longer entitled to claim share of the profits made since the dissolution including the increase in the value of the assets. It was held that on the construction of S. 42 of the Act, the term 'profits' referred to profits accruing in the ordinary course of carrying on the partnership business pending realisation. Accordingly for the purpose of S. 42, the profits of the farming business carried on by the son using the partnership assets following the dissolution caused by the father's death consisted of the earnings of the business derived from the disposal in the ordinary course of trade of live stock and produce and did not include any increase in value of the partnership assets occurring after the father's death. Thus even if the father's executor had made an election under S. 42 to take 5% interest instead of share of the profits, such an election would not have affected the estate's right to the share of the increase in the value of the assets. It was further held that until realisation of the partnership business and assets, the son was trustee of the business for the deceased's estate and himself. Accordingly the increase in the value of the assets was held by him for the benefit of both, the estate and himself. On facts it was found that the executor had not as yet given an option as contemplated by S. 42 and till such option is exercised, the estate would not be deprived of the right to receive 1A of the net proceeds of the sale of the assets of partnership business after making a proper allowance to the son for the management of the partnership business since the death of the deceased. This judgment is distinguishable on facts because in the present case the firm did not stand dissolved on the death of the partner whereas in the aforesaid case, the firm stood dissolved on the death of the partner, In respect of this judgment, a note has been recorded by the author at the bottom of page 74 1. 'Lindley on Partnership' that :

'the position might be different if the assets constitute trading stock. In such circumstances, the increase in the value would generally amount to profits within the meaning of S. 42 of the Partnership Act, 1890.'

At any rate it cannot be said on the basis of this authority that the legal position was clear that even if the firm did not stand dissolved, even then the increase in the value of the assets after the death of the partner has to be given benefit of to the heirs of the deceased partner.

24. The counsel for the petitioner has brought to my notice 1961 Irish Reports at page 96, Imma Emelda Meagher v. Patrick Meagher. A photo-copy of the judgment has been placed on record for my perusal.

25. The facts of the said case, in brief, were that T, E and P carried on business in partnership. There was no deed and all parties agreed that the partnership was at will. T died and E and P carried on the business. After the death of T and before realisation, the value of the assets rose. On the question of valuation of T's share, it was held by the court that the time for ascertaining the value of the deceased partner's share was the date of realisation and not the date of death and further where the partnership assets increase in value after the death of a partner and before realisation such increase in profits and the deceased partner's personal representatives are entitled to an appropriate share thereof. However, it was clarified that if the personal representative of the deceased partner chooses under S. 42 of the Partnership Act to accept interest @ 5% per annum on the deceased partner's share from the date of death to the date of realisation in lieu of a share of the profits for the same period, such share must, in these circumstances, be calculated as of the date of death.

26. The counsel for the petitioner has drawn my attention to the offer given by respondents 2 to 5 under S. 37 of the Indian Partnership Act which is similar to S. 42 of the English Partnership Act wherein it has been mentioned that in case the arbitrator was to give money as share of respondents 2 to 5, then they prefer to have interest @ 6% per annum rather than share in the profits. In the present case thus it is urged that the arbitrator did not commit any error of law apparent on the face of the record when he keeping in view the option so exercised, had - evaluated- the share of the deceased partner as it existed on the date of death and had given interest @ 6% per annum over the money found due to respondents 2 to 5. I may also clarify at this stage that in both these cases, there

was no provision made in the partnership deed that the partnership was to continue even on the death of a partner. These cases were of dissolution of partnership on death of a partner and thus are not strictly speaking on all fours on the point arising before this court. But one thing which is significant is that this judgment, in the case of *Emma Imelda* 1961 IR 96 (supra) even in the case of dissolution taking place on the death of a partner has held that where the option has been exercised to take interest, then the share of the deceased partner has to be evaluated as it existed on the date of death of the partner and no benefit of the increase in the value of the assets from the date of death onwards is to be given to the legal representatives of the deceased partner. In law of Partnership by Charles D. Drake at pages 248 and 249 (Third Edition), these two cases were commented upon by the author by mentioning that 'in the *Meagher's* case 1961 IR 96, the Court went on to say that where an election is made under S. 42(I), the right to claim a share of profits is necessarily foregone and involves a valuation of the assets as at the time of death. It was on this last conclusion that an English Court disagreed in *Barclays Bank Trust Co. Ltd. v. Bluff* 1981 (3) All ER 232. As in the *Meagher* case, a partnership at will had been dissolved by the death of one of the partners and some time had elapsed without a settlement of accounts. The assets in the English case had appreciated from a value of £ 4,500 at death to over £ 1,00,000, a gain for which the continuing partner was trustee for the estate of the deceased partner. Clearly it would be wrong to allow the former to pocket a profit which bears no relationship to his own activity, as in the case of a rising market price or the granting of planning permission. It was found, despite some rather desultory correspondence, that no election under S. 42(I) had in fact been made and that it was still open to make the election between interest or profits.' The author opined that the enhanced value of the farm was not profits in the sense and stood quite apart from election as between interest and profits in S. 42(I). It was further observed by the author that presumably, the English Court would agree with the Irish example, in which following the death of a partner in a wholesale whisky business, the surviving partner locks away a stock of whisky until such time as a heavy rise in whisky prices occurs, when he realises in which event the rise would be properly termed 'profits' since 'use' in these circumstances would not be incompatible with passivity. It was observed by the author that the narrow test of

'profits' for the purpose of the section products results which unlike the Irish approach are fair and equitable. The author has referred to some other case of *Yates v. Finn*, where A & B were partners sharing profits equally but contributing capital respectively in the ratio 3 : 1. The court felt unable to apply the equal profits rule to profits made after a partnership as such had ceased to exist, saying that it was ordinarily just and right that the profits made by the business should be apportioned according to the capital employed in it. However there is no discussion made in this book with regard to the position where the partnership business is to even though a partner has died and whether the legal representatives of the deceased partner would be entitled to have the benefit of increase in the value accruing after the death of the partner.

27. In 68 Corpus Jurisdiction Secundum 285, it has been laid down that in determining the value of the firm's assets, the survivor is not entitled to take over such assets at an appraised value without the consent of the representative of the estate of the deceased partner and the pertinent date in determining the share of the deceased partner's estate is that of the death of such partner. Likewise the share is properly payable in its entirety as of such date. the judgment of the Supreme Court in *Addanki Narayanappa v. Bhaskara Krishnappa*, : [1966]3SCR400 which is referred by the Arbitrator in his award has only broadly enunciated the principles governing the partnership property. It has held that the provisions of Ss. 14, 15, 29, 32, 37, 38 and 48 make it clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realisation of this property and upon dissolution of the firm, to a share in the money representing the value of the property. It was mentioned that upon the dissolution of the firm, the partner is entitled to a share in the assets of the firm which remained after satisfying the liabilities set out in clause (a) and sub-cl. (i), (ii) and (iii) of clause (b) of Section 48. There is no dispute that in the case of dissolution of partnership, all the assets of the partnership have to be converted into money and then that money has to be distributed to the partners in accordance with their share. Nothing said in the judgment helps the contention of the learned counsel for respondents 2



to 5 that where in accordance with the terms of the partnership deed, the partnership is not to be dissolved on the death of a partner, in that situation whether it is incumbent to direct for the sale of the assets of the partnership firm and as to whether the representatives of the deceased partner are entitled to have benefit of the increase taking place in the value of the property since the date of death of the partner. The second judgment of the Supreme Court referred to by the arbitrator is *Khushal Khemgar Shah v. Mrs. Khorshed Banu Dadiba Boatwala*, : [1970]3SCR689 , hat has been held in this judgment is that Section 55 does not provide that goodwill may be taken into account only when there is a general dissolution of the firm, and not when the representatives of a deceased partner claim his share in the firm, which by express stipulation is to continue notwithstanding the death of a partner. It has also been held in this-judgment that Sections 39, 42 and 46 deal with the concept and consequences of dissolution of the firm, they do not abrogate the terms of the contract between the partners. The Partnership Act does not operate to extinguish the right in the assets of the firm of a partner who dies, when the partnership agreement provides that on death, the partnership is to continue. It has been held that in interpreting the deed of partnership, the court will insist upon some indication that the right to a share in the assets is by virtue of the agreement that the surviving partners are entitled to carry on the business on the death of the partner to be extinguished. In the absence of a provision expressly made or clearly implied, the normal rule that the share of a partner in the assets devolves upon his legal representatives will apply to the good will as well as to other assets.

28. Apart from the fact that this was also a case where the partnership deed provided that on the death of a partner, the dissolution will take place, nothing said in this judgment is of any help to the respondents 2 to 5 in showing that as to whether the share of the deceased partner is to be given in money or not. The learned arbitrator has only made reference to these two Judgment but hag not culled out any specific proposition of law from these judgments. Rather these judgments did not throw any light on the specific points arising for decision before the arbitrator as to whether the respondents 2 to 5 were to be given their share in the shape of money and whether they were to be given benefit of increase accruing in the value of the assets after the death of the partner. The mere fact

that these two judgments do not throw any light on these two points and have been referred by the arbitrator in his award would not mean that the arbitrator has committed any error of law apparent on the face of the award. The arbitrator has not given any reasons for reaching his finding that legal heirs have to be given their share in money. He has only referred to these two judgments and then to Lindley on partnership and then to para 10 of the Statement of Claims filed by respondents 2 to 5 and then to Section 48 of the Partnership Act and had given the finding that it is fair and reasonable construction of the instrument of partnership that the respondents 2 to 5 should be given their share in money and the value of the share of the deceased is to be assessed as on September 14, 1983. The court cannot embark upon independently to enquire into the process of the mind of the arbitrator to know as to how the arbitrator has given his finding. Even if this court may be inclined to exercise this discretion differently, even then the court is debarred from going into this question. Apparently how a particular partnership deed may be interpreted, was within the exclusive forum of the arbitrator which cannot be transgressed by the court.

29. Mr. Sahai, counsel for defendants 2 to 5 has placed reliance on *Ajudhia Pershad v. Sham Sunder*, AIR 1947 Lah 13. This was a case of a retiring partner and it was held that the Partnership Act makes no provision for separation of the share of a retiring partner and the intention may be that this shall be determined by agreement between the partners. A partner who is not a minor and has not obtained the agreement of the other partners to severance of his share, can only secure separate possession of his share by seeking dissolution and in such a case the rules laid down in Sections 46, 48 and 49 become applicable. I do not understand how anything laid down in this judgment can support the contention of the learned counsel for the objectors that the arbitrator had committed an error apparent on the face of the award by directing that these objectors have to be paid their share in the shape of money. After all this case before the Lahore High Court pertained to the effect of a retiring partner which resulted in dissolution of the partnership. If that is so, obviously the provisions of Sections 46, 48 and 49 in strict sense would become applicable. In the present case, there is a contract to the contrary as contained in the partnership deed that the partnership was not to be dissolved on the death of a partner. If that is so, it is not wrong on the part of

the arbitrator to come to the conclusion that the only equitable and fair manner of giving the share to the heirs of the deceased partner is by way of money. It cannot be said that the arbitrator has come to this conclusion on any illegal proposition of law.

30. Reference is then made to *Shiam Sunder v. Pratap Chandra*, : AIR1952 All330 , in which case it was laid down that where at the time of the dissolution of a partnership, it is found that some of the partnership stocks are mixed up with the goods of one of the partners and are held by him, and not distributed or evaluated by him in his hands, the goods of the dissolved partnership must, of necessity, be deemed to have been held under fiduciary relationship and under Section 66 of the Trusts Act, the result of wrongful intermingling of trust property with the private property of the trustee, entitles the beneficiary only to have a charge on the entire property for the recovery of the trust fund and since Section 51 of the Act prohibits a trustee from using the trust property for his own profit, it is obvious that the property plus the profits derived there from must be made available for distribution amongst the partners of the dissolved firm was made. This case is based on different facts. It was the case of dissolution of partnership. Obviously solved firm. It was observed the case of dissolution of partnership. Obviously once partnership is dissolved, in terms of Sec. 46 of the Partnership Act, the assets of the partnership have rights and liabilities should be determined into be sold by public auction and the money so realised is to be distributed amongst the partners.

31. Section 37 of the Partnership Act contemplates the position where after dissolution, the assets remain in possession of one of the partners and some profits are earned; then an option is given to the other partner either to ask for profits so earned by the other partner by utilising the assets after the dissolution of the partnership or claim interest @ 6% per annum on the amount which may be found due to the said partner on taking accounts. In the present case the heirs of deceased partner had given an unequivocal option under Section 37 of the Act that in case they were to be paid their share in the shape of money, then they should be paid interest @ 6% per annum. The arbitrator had kept in view this option of these objectors while giving the finding that the share of the said objectors has to be evaluated on the value of the assets as on the date of death of

the deceased partner. No legal proposition which is applicable to the facts of the present case has been enunciated in this judgment of the Allahabad High Court. It is true that in case the arbitrator flouts the provisions of Section 48 of the Partnership Act, the same amounts to legal misconduct (See *Sherbanubai Jafferbhoy v. Hooseinbhoy Abdoolabhoy*, AIR .1948 Bom 292. Such in not the case here.

32. Counsel for the objectors also sought some support from the judgment given in *Vidya Devi v. Mani Ram*, : 10(1974)DLT311 . This case was also of a situation where a partner retires and it was mentioned that such a retiring partner can claim dissolution of the partnership if there is no provision to the contrary made in the partnership deed. It was observed by the single Judge of this Court that the Partnership Act makes no provision for the separation of the share of a retiring partner and the intention may be that this shall be determined by agreement between t e parties. It was also mentioned that where a retiring partner does not seek dissolution, he can withdraw from the firm and let the remaining partners continue to carry on the business of the firm without dissolution. It was also observed that a partner who has not obtained the agreement of other parties to the severance of his share can only secure separate possession of his share by seeking dissolution and in such a case, the rules laid down in Sections 46, 48 and 49 become applicable and in that situation the assets of the firm must be collected and converted into cash and be applied to the payment of debts and liabilities of the firm and the surplus distributed among the partners according to their shares. There is no dispute about the proposition of law laid down in this judgment. However, in the present case, there is a term agreed upon between the partners as incorporated in the partnership deed that the -partnership shall not stand dissolved with the death of a partner and in that situation the share of the deceased partner has to be separated as it existed on the date of his death because if the contention of the objectors is accepted that the partnership is to be deemed to be dissolved on the death of a partner, then that would amount to violating the specific term agreed upon in the partnership deed.

33. The counsel for the objectors has contended that even though the partnership deed contemplated continuance of the partnership even on the death of a partner,

even then only mode available for separating the share of the deceased partner was to convert all the assets of the partnership into in money and distribute the same among the partners and the heirs of the deceased partner in accordance with their share. There is a fallacy in this contention. If the partnership is to continue, it is not understandable how it can continue when all the assets have been converted into money which is usually done on the dissolution of a partnership.

34. The counsel for the petitioner has brought to my notice Pannalal Paul v. Padmabati Paul, : AIR1960 Cal693 wherein a Division Bench of the said court held that in a suit for dissolution of a firm, sale of the assets of the dissolved firm is the general rule but the court has the power to mould the relief in accordance with the circumstances of the case . If the equities of the case so require, the court has the power to direct that the properties be allotted to the partner who is willing to take them at a valuation fixed by the court and that the proceeds be applied for the purpose of Section 46. Similarly on a reference of disputes in a suit for dissolution of a firm, the arbitrator has full power to make allotment of the assets and properties of the dissolved firm to one of the partners at a valuation fixed by the arbitrator. So it is not an absolute principle of law that even in case of dissolution, the assets of the partnership must be converted into money. The court has the discretion and so also the arbitrator.

35. Mr. Sahai has made reference to Kasi v. Ramanathan Chettiar AIR 1949 Mad 693 wherein it has been laid down that after the dissolution of partnership by the death of a partner, the obligations of surviving partners to the representatives of the deceased partner, are not more onerous than those of a partner to his other partners in a running partnership, and the legal representatives of the deceased partner have the option to claim profits or interest under Section 37 of the Partnership Act and they can exercise such option only after ascertainment of profits. It is true that option under Section 37 normally should be exercised after accounts have been gone into and the position becomes clear but there is no legal bar laid down under S. 37 that such an option cannot be exercised at all even prior to taking up accounts. In the present case, the objectors/ legal heirs of the deceased partner had exercised the option under Section 37 and in writing, in

which they had mentioned that if they were to be given their share in specie, then they exercise the option to have the profits but if they were to be given their share in money, then they claim interest @ 6% per annum. The arbitrator in his wisdom thought it fit to give the share to these objectors in the shape of money and thus he had to give interest on the amount so found due in accordance with the option exercised by these objectors. The case before the Madras High Court was also a case of dissolution on the death of a partner and not a case where it was provided in the partnership deed that death of a partner would not result in dissolution of partnership.

36. Reference was also made to *Morris Robert Syers v. Daniel Backhouse Syers and Edward Louis Paraire* (1875) 1 AC 174 but that case related to a partnership at will and the question was when the same came to be determined and dissolved and it was held that the accounts must include the principle, the 8th share of the profits and also the eighth share of the assets up to the date of filing the answer. The facts are totally distinguishable and nothing said in this judgment is of any help in deciding the issues arising before me.

37. The counsel for the objectors has strongly argued that as ultimately the partnership was dissolved in 1985 and by that date the share of the objectors was not evaluated, it would have been more fair and equitable if the arbitrator had divided the immovable property in four separate shares and allotted the share of the objectors in specie as was done in respect of other three partners. As already held by me above, the arbitrator has not committed any error of law apparent from the face of the award in awarding money as the share of the objectors and also he was not wrong in evaluating the share of the objectors as on the date of death of the partner. The court cannot examine the award as if it is sitting in appeal and come to a different finding. It was well within the jurisdiction of the arbitrator to exercise his discretion on the point whether share of the objectors is to be given in the shape of money or specie. It is true that the law did not put any restraint on the use of such discretion by the arbitrator. He could in equity or justice, give to the objectors their share in specie but unfortunately for the objectors, the arbitrator has exercised the discretion keeping in view various factors mentioned in the award itself and such decision of the arbitrator, in my opinion, is not open to judicial

review unless and until it is shown that the arbitrator has committed any error of law on the face of the record. In my opinion, the arbitrator has not committed any such error of law, which could vitiate his finding on these points. As already - noticed above, the Irish Judgment brought to my notice clearly contemplated evaluation of the estate of the deceased on the date of death in case the option was exercised by the legal heirs to have the interest instead of profits. So the arbitrator had keeping in view the option exercised by the legal heirs of the deceased partner under Section 37 of the Partnership Act evaluated the share of the deceased as on the date of his death. Even the reference made to the arbitrator contemplated giving such discretion to the arbitrator. So examined from any angle, I am of the view that the award of the arbitrator cannot be set aside on such an objection. I negative the objections on this score.

38. The next objection raised is with regard to evaluation of the land located at Gur Mandi. This land is admittedly in possession of Seema Builders with which the partnership entered into an agreement and there had arisen some disputes between the builder and the partner which are still to be resolved. As the said land was not vacant, the arbitrator took the market value of the said land at Rs. 400 per sq. yard although if the land had been vacant, the market value of the same would have been Rs. 800/- per sq. yards. The contention raised before me by learned counsel for the objectors is that it cannot be said that the said land was in possession of some trespasser and thus the market value had to be reduced to half and there was every possibility that the agreement with the builder could be renewed and the potentiality of the land could be increased by such an agreement being made later on and there was no reason for the arbitrator to have reduced the market value of the said land from Rs. 800 per sq. yard to Rs. 400 per sq. yard. It is not disputed before me that even the values appointed by the objectors has given the report that market value of the land which is in unauthorised possession should be taken at half. It cannot be said that the arbitrator has committed any error of law in determining the market value of the aforesaid land. As a matter of fact such error of law is not apparent from the award and the documents incorporated in the award. The arbitrator has not given any reasons while assessing the value of each and every immovable property which is incorporated in Annexure 'F' to the award. So the Court cannot look to the

evidence led before the Arbitrator to give a finding that the valuation so arrived at by the arbitrator is incorrect. No reasons have been given by the arbitrator in Annexure 'F' or in the award. So on this aspect of the matter, the award has been given without giving reasons as held by the Supreme Court in the case of Raipur Development Authority's case (supra), the award cannot be set aside on the ground that the reasons have not been given. Where no reasons have been given in support of a particular finding, the court cannot hold that any error of law has been committed by the arbitrator on the face of the record. I thus find no merit in this objection and negative the same.

39. It is then pointed out by the learned counsel for the objectors that the arbitrator has committed certain clerical mistakes or errors arising from accidental slips or omissions which need to be rectified by this court. It is pointed out by the learned counsel for the objectors that the arbitrator has valued the shares held by the partnership firm as on -September 14, 1983 at Rs. 1,48,847 in Annexure 'B' to the award but in Annexure 'C', this amount has been omitted by inadvertent mistake while calculating the amount payable to the objectors. Counsel for the other parties also admit that this clerical mistake has been made by the arbitrator and the objectors have 1/4th share in the said amount as well. The award is liable to be modified to that extent. I hold accordingly.

40. The arbitrator while allowing interest @ 6% per annum on the amount found due to the objectors as on September 14, 1983 had deducted a sum of Rs. 82,900 paid to the objectors by installments from 1984 to June 7, 1988 and also deducted an amount of Rs.45,134/- on account of 1/4th share of expenditure incurred on the joint property viz., 1, Tughlak Lane, New Delhi up to June 7, 1988 from the principal amount payable to the objectors on September 14, 1983. It is a settled law that any payment received has to be first adjusted towards the interest and after clearing the interest, the payment is to be adjusted towards the principal amount. The arbitrator appears to have committed this illegality on the face of the award which needs to be corrected. I order that the payments received by the objectors and the expenditure incurred according to their share on 1, Tughlak Lane, New Delhi would be adjusted towards interest at first and thereafter towards principal. The award is to be modified to that extent.



41. The third mistake committed by the arbitrator pertains to the dividends received by the petitioner and respondent No. 6 which are to the tune of Rs. 7312/-. The arbitrator appears to have committed a mistake in not giving 1/4th share to the objectors in this dividend. As mentioned in Annexure 'C' to the award the award is modified to that extent. The objectors are entitled to have 1/4th share in the said amount as well.

42. It is then pointed out by learned counsel for the objectors that the balance sheet of the firm ending September 14, 1983 showed an amount of Rs. 9972.73 lying to the credit of the firm under Section 194A of the Income-tax Act and a sum of Rs. 40,687.56 was lying to its credit regarding deductions at source in dividends in Income-tax account but no benefit of the said amount has been given to the objectors. I think that the arbitrator has committed a mistake in not giving benefit of these amounts to the objectors and the award is liable to be modified to that extent and I direct accordingly.

43. Then it has been pointed out by learned counsel for the objectors that there were 10 1 silver coins and 4 gold sovereigns of the partnership firm which were being used by the partnership firm for performing Pooja and were in possession of the petitioner and respondent No. 6, but no benefit of the same has been given. The counsel for the petitioner wanted me to refer to the cross-examination of Anil Gupta at page 749 of the arbitrator's file where some suggestions have been given by the counsel for the petitioner and respondent No. 6 to Anil Gupta regarding these items. I am afraid that this court cannot appraise the evidence led before the arbitrator to come to the conclusion that the said items were assets of the partnership business. Hence I negative this objection.

44. The learned counsel for the objectors has then pointed out that the arbitrator has arbitrarily fixed Rs. 30,000/- as gratuity liability of the two employees of the partnership firm in Annexure 'D' but the same amount would not have exceeded Rs. 13,950/-. The arbitrator has not given any reason for fixing this liability. It is not possible for this court to look to the documents or evidence which are not incorporated in the award to give a different finding. So this objection is also negatived.

45. Then the counsel for the objectors has referred to the amounts due from the partnership firm to another firm of the parties and has contended that in fact that amount was to come to the partners and no such liability should have been imposed. It is not possible to go into this objection in view of the fact that no reasons have been given by the arbitrator for imposing this liability of Rs. 38,436/- payable to M/s. Hanuman Pershad Sri Nath and. also an amount of Rs. 1494.25 to the same effect. Hence I negative this objection as well.

46. The counsel for the objectors has lastly pointed out that the arbitrator was wrong in treating the property No. 2199, Dharam Pura, Delhi as residential when admittedly the ground floor was being used by the said partnership firm for commercial purposes. The counsel for the petitioner wanted me to refer to the evidence to show that this ground floor was being used for commercial purpose and he cited Prem Nath v. Union of India 1981 RLIZ 37 wherein it has been held that if the arbitrator ignores the admissions, then he is guilty of legal and judicial misconduct. The nature of the property is residential but the case of the objectors appears to be that the partnership firm has used the ground floor as its godown. The arbitrator has not given any reasons while assessing the said property. So it cannot be said that any error of law apparent on the face of the record has been committed by the arbitrator in evaluating the said property. Hence I negative this objection. as well.

47. So, the objections comprised in above applications are partly allowed and the award is modified to the mentioned above.

IA 7558/88

48. Anil. Kumar Gupta, respondent No. I has filed this objection petition. The main objection raised by learned counsel for respondent No. I is that the arbitrator committed error of law in ignoring the plea of the objector that property No. 1, Tuglak Lane, New Delhi was capable of actual physical division and the arbitrator was wrong in directing sale of the said property. It has been contended before me by learned counsel for respondent No. I that the same was a very valuable and precious property of the family wherein parties are already living in separate portions as was indicated in a plan placed before the arbitrator which amounted to

division of different shares of the parties of that property by metes and bounds and the arbitrator should have divided the property in that manner instead of directing the sale of this valuable property of the family. The land underneath the said property is leasehold and the arbitrator appears to have sent a letter to Land & Development Officer in order to find out whether the land could be divided into four equal shares by giving title to each of the parties. A letter was received (appearing at page 644 of the arbitrator's file) from the Land & Development Officer mentioning that the construction to be raised on the aforesaid land has to be single structured and sub-division for the purpose of raising any construction in the aforesaid land is not possible. Shri V. K. Gupta, Architect, whose report appears at page 511 of the arbitrator's file, also gave the same report. The arbitrator in his award has mentioned about these two pieces of evidence and given the finding that equal physical division of the said property among the four parties with separate titles is not possible/ equitable. The only reference made to the arbitrator was to the effect, whether equal physical division of the property among four parties with separate titles is possible/ equitable? If not, in what manner, it can be best sold/disposed of. It was quite clear that the Land & Development Officer would not have permitted separate titles to each of the parties in that land and no separate construction could -be-raised-by each of the parties and keeping in view these difficulties, the arbitrator thought it fit to give the finding that it was not possible or equitable to divide the building in four equal physical parts among four parties. It is a settled law that the reasonableness of the reasons given by the arbitrator cannot be gone into by this court. It may be that the court in similar facts may be inclined to give a different finding. If the Land & Development Officer was not to permit separate constructions on the said plot, the potential of the said property could not have been utilised to its maximum by the owners. So it cannot be said that any error of law on the face of the record has been committed by the arbitrator in giving this finding and directing that the property be sold by public auction as it would fetch the best price. I see no way to interfere with the award given by the arbitrator in this respect. This court has no jurisdiction to look into the evidence led before the arbitrator other than what has been incorporated in the award. The alleged plan showing the physical division of the property has not been incorporated in the award. So the same cannot be looked into. I negative this

objection.

49. The next contention raised by learned counsel for respondent No. 1 is that the arbitrator had no jurisdiction to place any charge on the share of respondent No. 1 with regard to property No. 1, Tughlak Lane, New Delhi for payment of the amount to respondents 2 to 5. It was the liability of the remaining partners to reimburse the share of the deceased partner to his legal heirs. The Tughlak Lane property is admittedly the property of the same partners whose assets were being divided. Hence it cannot be said that the arbitrator was wrong in putting a charge on the share of the remaining partners with regard to property No. 1, Tughlak Lane, New Delhi for reimbursement of the share of the legal heirs of the deceased partner. I find no merit in this particular objection of respondent No. 1 and hereby negative the same.

50. Respondent No. 1 has also taken similar objection as to the arbitrator not granting share to respondent No. 1 with regard to income-tax as has been raised by respondents 2 to 5. This respondent No. 1 will also get benefit of the said amount of income tax etc. as indicated while deciding the objections of respondents 2 to 5. The award will stand modified to that extent.

51. A contention has been raised that respondent No. 1 has not been given any benefit of a sum of Rs. 25,000/- which was given by M/s. Seema Builders, with which agreement was made regarding the land of Gur Mandi. This property has been awarded to respondent No. 1 and the agreement with Seema Builders is in dispute. So there was no question of giving any benefit to respondent No. 1 with regard to amount received from M/s. Seema Builders. At any rate, the award or the documents incorporated in the award do not show any such error apparent on the record which could be modified by this court.

52. A similar objection regarding silver coins and gold sovereigns has been raised by respondent No. 1, which has been negated while deciding the objections of respondents 2 to 5. For the same reason, this objection is negated. This objection petition is dismissed with the slight modification in the award in the light of the order indicated above.

IAs 7559/88 & 2326/89:

53. The petitioner and respondent No. 6 are accepting the award but have only prayed for some clarifications to be given with regard to certain facts missing in the award due to some inadvertent omissions by the arbitrator. It appears that at page 20 of the award, the arbitrator with his hand has written 'the amounts found due to respondents 2 to 5 and to Anil shall be the first charge on the share of Sushil & Sudha Gupta of the sale proceeds of 1, Tughlak Lane, New Delhi.' However, vide letter dated June 12, 1988, the arbitrator while forwarding the award and the proceedings, realised his mistake and mentioned that instead of that hand written note at page 20 of the award, the same should read as follows:

'The amount found due to respondents 2 to 5, the principal and the interest @ 6% per annum from the date of death of Shri Atul Kumar shall be the first charge on the entire net proceeds of the sale of 1, Tughlak Lane, New Delhi. So far as the amount found due to Shri Anil Kumar Gupta is concerned, that will be first charge on the share of Shri Sushil Gupta and Smt. Sudha Gupta of their share of sale proceeds of 1, Tughlak Lane, New Delhi. '

54. Counsel for the petitioner and respondent No. 6 prayed that the award as modified by the arbitrator himself should be made rule of the court in this respect, whereas counsel for Anil Kumar Gupta has argued that the arbitrator has become functus officio after giving the award and thus the modifications suggested by the arbitrator in his subsequent letter should not be given any importance by this court. Legally the amount due to respondents 2 to 5 was the responsibility and liability of remaining partners, including respondent No. 1 and thus the arbitrator was right in saying in his letter dated June 12, 1988 that Anil Kumar Gupta's share also has to be charged in the same manner as the share of petitioner and respondent No. 6.

55. Counsel for the petitioner and respondent No. 6 have drawn my attention to Section 13 of the Arbitration Act which lays down that the Arbitrator has the power to correct in an award any clerical mistake or error arising from any omission. It appears that the arbitrator while recording a hand note at page 20 of the award, made a clerical mistake in excluding Anil Kumar while imposing the liability on petitioner and respondent No. 6 with regard to the amount found due to

respondents 2 to 5 and he realised his mistake and corrected the same by sending the letter dated June 12, 1988 along with the award and the proceedings. Under Section 15 of the Arbitration Act, the court has also power to modify or correct the award where the award contains any obvious error which can be amended without affecting such decision or where the award contains clerical mistake or an error arising from accidental slip or omission. So I find force in the contention of petitioner and respondent No. 6 and hold that the award is to be made of the court as modified by letter dated June 12, 1988 of the arbitrator in this respect.

56. It has been then pointed out that the arbitrator had calculated the amounts which are payable to the petitioner, respondent No. 1 and respondent No. 6 as on the date of the award and the said three partners have to realise the said amount from the assets of the firm such as stocks and shares and bank balance etc. and it is made clear in the award at page 20 that the three partners are entitled to receive the said amount found payable respectively to them as per Annexure 'H' mentioning that an amount of Rs. 73,531 / - is liable to be paid to Anil Kumar Gupta equally by the petitioner and respondent No. 6 and in arriving at the amount payable to Anil Kumar Gupta as per Annexure 'H', the arbitrator has already taken into account the valuation of the stocks and shares, dividends and bank/ cash balance and other current assets of the firm but the arbitrator due to inadvertent mistake at page 20 of the award had observed that the shares are to be equally divided between the surviving partners as far as possible. It is argued that once the shares have been accounted for while determining the share of Anil Kumar Gupta, there was no occasion for the shares to be divided and given to Anil Gupta as well. It appears that the arbitrator has committed a mistake in giving double benefit to Anil Kumar. In Annexure 'H' the value of the share has been taken into consideration and Anil Kumar has been given benefit of the same while calculating his amount and obviously he cannot be given the shares as well once he has been given the value of the shares. This clerical mistake appears in the award and is liable to be corrected with the direction that shares are only to be divided now between petitioner and respondent No. 6 and Anil Kumar Gupta is not to get any shares.

56A. Another contention raised before me by learned counsel for the petitioner and respondent No. 6 is that the arbitrator has wrongly mentioned at page 20 of the award that Anil will not be liable for payment of property tax. It is contended that Anil continued to be partner of the firm and has been allotted property according to his share and thus he is liable to pay property tax proportionately till the award is made rule of the court. There appears to be much force in this contention. The learned counsel for Anil Kumar Gupta tried to contend that the Arbitrator in his wisdom has relieved Amumar Gupta from the responsibility of paying any property-tax as Anil Kumar Gupta did not get as valuable property as has been given to petitioner and respondent No. 6. The contents of the award and the documents incorporated in the award do not bear out any such contention of the learned counsel for Anil Kumar Gupta. It is not possible to look into the evidence to see whether the contentions raised on behalf of Anil Kumar Gupta in that respect have any force or not. On the face of the award, it is evident that Anil Kumar Gupta could not escape the payment of property-tax proportionately according to his share, till the award is made rule of the court.

57. The award is liable to be modified to that extent.

58. In view of the findings given above, I direct that 'the award modified to the extent mentioned above be made rule of the court, Respondents 2 to 5 shall have interest at the rate of 6% per annum on the amount found due to them from the date of the award till realisation.

59. Order accordingly.