

A.K. Group and Others Vs. N.K. Group R.K. Group and Others

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Court : Delhi

Decided On : May-24-1996

Reported in : 65(1997)DLT688

Judge : K. Ramamoorthy, J.

Acts : [Arbitration Act, 1940](#); [Arbitration and Conciliation Act, 1996](#) - Sections 34 and 36

Appeal No. : Suit No. 581A of 1988, IAs 894, 1769, 1770, 1771 of 1988, OMP 109 of 1989 & OMP 23 of 1986

Appellant : A.K. Group and Others;sanghi Motors (Bombay) Ltd.

Respondent : N.K. Group R.K. Group and Others;mrs. Uma Sanghi and Others

Advocate for Def. : Sh. R.K.P. Shankardass, Senior Adv., ; Sh. P. Nagesh, ; Sh.

Advocate for Pet/Ap. : Sh. S.P. Aggarwal, Senior Adv.,; Sh. Sandeep Aggarwal,; Sh.

Judgement :

K. Ramamoorthy, J.

1. I heard the learned Counsel for the parties for a considerable length of time because the disputes were between brothers and the widow of one of the

brothers, living in different parts of the country. The four brothers originally thought - and one of them dies later that by referring, the disputes to arbitration, the division of properties could be expedited and they can have a peaceful life. But what happened subsequently is really very much disturbing. I thought that arbitration, at any day is better remedy than directly approaching the Civil Court but what was noticed by the court of Appeal in England sometime ago appears to be true 'Many years ago, a top hated old gentleman used to parade outside these Law Courts carrying a placard which bore the stirring injunction 'Arbitrate - don't litigate' I wonder whether the burning enthusiasm of that old gentleman would not have been dampened somewhat, had he survived long enough to learn something about the present case.

2. On 6.8.1984 the four Brothers N. K. Sanghi, A. K. Sanghi, R. K. Sanghi and M. K. Sanghi entered into an agreement called arbitration agreement referring the disputes for adjudication by Mr. H. K. Sanghi, who is in Delhi. On 18.8.1984 Mr. H. K. Sanghi entered on reference. Before he could hardly do anything effectively, the eldest brother N. K. Sanghi died on 19.10.1984, and that has turned the parties to different directions and they had indulged themselves in all sorts of what I would call vexatious proceedings without any regard and ignoring their basic obligations which they had undertaken under the terms of the arbitration agreement. This only shows that the parties were ready to resort to any kind of manoeuvring to achieve their ends defeating the legitimate rights of the other parties. From the facts it appears the contribution of the brothers for the development of the business in various places was done by their father and they had done little to improve on the same. But all the same, the greed pushed them to different corners resorting the proceedings which had already been adverted to. By the close of 1984 the four months time for publishing the award had come to an end, therefore, on 13.2.1985 Mrs. Uma Sanghi w/o N. K. Sanghi filed OMP 20/85 in this court under Section 28 of the [Arbitration Act, 1940](#) for extension of time. On 10.2.1985 M. K. Sanghi filed Company Petition No. 120/85 on the file of the Bombay High Court against the other parties claiming a few reliefs. On 16.12.1985 there was an agreement between Uma Sanghi and R. K. Sanghi with reference to the properties in the State of Rajasthan and Uma Sanghi agreed to withdraw OMP 20/85 in that agreement. On 18.12.1985 this Court extended the time for passing the award. On

18.1.1986 M. K. Sanghi filed his claim before the Arbitrator H. K. Sanghi. On 21.1.1986 R. K. Sanghi had made his suggestions to the Arbitrator. On 30.1.1986 suggestions were made by Uma Sanghi and others. On 31.1.1986 the children of A. K. Sanghi and children of R. K. Sanghi filed OMP 23/86 in this court challenging the arbitration agreement seeking for a declaration that the arbitration agreement was invalid and was non-existent. On 15.2.1986 this court passed an order in OMP 23/86 staying the arbitration proceedings in IA. No. 657/86. On 1.3.1986 there was an agreement between Uma Sanghi and R. K. Sanghi. I shall deal with this agreement a little later. On 11.9.1986 Uma Sanghi w/o N. K. Sanghi filed Company Application No. 39/86 in C.P. 120/85 in the Bombay High Court. A few days later, R. K. Sanghi filed Suit No. 920/86 in this court claiming the relief of specific performance against Uma Sanghi and others on the basis of the agreement dated 1.3.1986. On 17.10.1986 Vijay Kumar Sanghi S/o. A. K. Sanghi, from Delhi wrote to Uma Sanghi. The letter reads as follows :

'I have come to know that you have filed an affidavit in the District Court at Mhow, in the case of Mr. Vijay Kumar Sanghi and others v. Mrs. Uma Sanghi and others, deposing that Mr. Ratan Kumar, Mrs. Deepa Kajriwal, Mr. Amrit Kumar Sanghi, Mr. Vijay Kumar Sanghi and Mr. Valbhav Kumar Sanghi have expressed their desire to retire from the firm M/s. Sanghi Bros., Jodhpur and have thus retired. This fact deposed by you in the said affidavit is totally false even to your own knowledge.

I have neither ever expressed my desire to retire from the firm M/s. Sanghi Bros., Jodhpur at any stage nor have I retired from the same and your deposition in this respect is totally false and uncalled for. I am still a partner of the firm M/s. Sanghi Bros., Jodhpur, and you have no right to make a false statement that I have expressed my desire to retire from the firm and have thus retired, in any court proceedings or anywhere else. You should desist from making such wild statement which has no basis. If any damage is done to me on account of such false and misconceived statement, you will be held responsible for the same.

I further, request you to withdraw the said wrong statement made by you in the affidavit filed in the court at Mhow by filing a fresh affidavit giving the correct facts

so that the record of that court is corrected factually else I will be compelled to handover the matter to my legal advisers.'

I may note here itself that as such Vijay Kumar Sanghi, who wrote this letter, would enter into a reconstruction scheme in 1994 with Uma Sanghi, about which I will deal with it in the course of this judgment presently.

3. On 20.11.1986 this court passed final order in is 657/86 in OMP 23/86 directing the Arbitrator to proceed with the arbitration but the Arbitrator should not publish the award. On 18.12.1986 Sanghi wrote to the Arbitrator in the following terms :

'Further to my letter of the 23rd January, 1986, I advise as under :

(1) that in breach of the agreement signed with me, Mrs. N. K. Sanghi and her family have allegedly exchanged shares of W.I.S.M. and Sanghi Motors (Bombay), with Mr. M. K. Sanghi and family.

(2) Mrs. N. K. Sanghi and Mr. M. K. Sanghi have also reconstituted the family firm of Sanghi Brothers by excluding from it Mr. A. K. Sanghi and his family, and myself and my daughter, Mrs. N. K. Sanghi and M. K. Sanghi have thereforee both breached the arbitration agreement.

(3) (a) Mrs. N. K. Sanghi has not submitted accounts of any of the business under her management for the last two years and unless she submits these accounts, you cannot make any award as there is no way of knowing the state of affairs. I understand huge liabilities have accrued against Sanghi Brothers and W.I.S.M. from banks and other institutions. I enclose a copy of the Company Petition that I have filed at Jodhpur, which will give you some details in this respect.

(b) In a similar manner, the accounts between the two divisions of Bombay have not been reconciled or finalised for the last two years.

(c) I say that unless accounts of all the family concerns are available we cannot make any suggestion are blocks nor can you make any award.

(4) My offer under paragraph 3(iii) has to be reviewed after all the accounts are received and considered.

(5) I say that M. K. Sanghi has misappropriated large sums of money of the Company as under :

(a) he received a sum of Rs. 12 lacs in cash from M/s. Schlumberger in April/May 1983 and this was the main cause of the starting of the dispute.

(b) he has received a further sum of Rs. 15 lacs in cash from the same firm by prematurely renewing the agreement with M/s. Schlumberger in September/October 1984.

(c) he has continuously under invoiced the products of the Company, and some details of these proceedings can be seen from my Suit No. 2725/84, copy of which will be delivered to you by me personally.

(d) subsequent to the filing of the suit, M. K. Sanghi continued under invoicing- consequent to which, three show-cause notices have been issued to him by the Excise authorities. These notices may result in substantial penalties on the company.

(e) The Oxygen Division of Bombay which was previously showing a profit of Rs. 50 lacs a year, has been reduced to 10/15 lacs per year.

Please therefore prevail on all concerned to send you the latest balance sheets and accounts so that the next steps can be taken.'

Why I am extracting this letter is that the parties had gone far beyond the terms of the agreement and they had not come to grip of the understanding amongst themselves to enable the Arbitrator to adjudicate on the specific disputes with clear figures and the particulars. On 20.12.1986 M. K. Sanghi wrote to the Arbitrator in the following terms :

'As per the family arrangement arrived at on 6th July 1983, which has been given effect to, the Motor Division of Sanghi Motors (Bombay) Ltd. consisting of the businesses and assets stated in Annexure 1 hereto were handed over to R. K. Sanghi as his share and that of Sanghi Oxygen and other division of Sanghi Motors (Bombay) Ltd., consisting of assets stated in Annexure 2 hereto have

come to M. K. Sanghi as his share. The present arbitration is subject to that family arrangement and the division already made as stated above and consequently the learned Arbitrators should proceed to divide the remaining family business.

(2) In addition to the share which came to M. K. Sanghi group pursuant to the family arrangement and that which may be awarded to M. K. Sanghi group by the Arbitrator in the remaining family business M. K. Sanghi group has to receive assets of the value of Rs. 30 lakhs as is agreed upon and provided in the arbitration agreement itself.

(3) As according to the arbitration agreement the place of business of the respective parties is to be maintained it will be fair and equitable that the additional assets of the value of Rs. 30 lakhs be given to M. K. Sanghi group from out of the assets of the Motor Division of Sanghi Motors (Bombay) Ltd. and consequential adjustments be made amongst R. K. Sanghi, A. K. Sanghi and late N. K. Sanghi group.

(4) This method would be most equitable and proper method so as to be in keeping with the basic principles and understanding of the arbitration agreement. It may be mentioned that in this arbitration the division already effected by the family arrangement of 6th July, 1983 cannot be reopened as the present arbitration is subject to the division already effected.

(5) The Arbitrators are informed that as between M. K. Sanghi and late N. K. Sanghi group adjustment as between these two groups vis-a-vis Bombay business and Rajasthan business of WISM has already been effected by M. K. Sanghi group exchanging the shares of WISM with the shares of late N. K. Sanghi Group in Sanghi Motors (Bombay) Ltd.

(6) It may further be noted that the entire subject matter of Bombay business viz., Sanghi Motors (Bombay) Ltd. is the subject matter of Bombay High Court Company Petition No. 128 of 1985 (M. K. Sanghi v. R. K. Sanghi and others).

On 1.2.1987 M. K. Sanghi wrote to the Arbitrator in the following terms :

'Pursuant to your letter I, M. K. Sanghi, on my own behalf and on behalf of the members of my Group (family) make the following suggestion for the division of the businesses, assets, etc. of the Companies and firms mentioned in the Schedule to the Agreement of 6th August, 1984 in four equal lots.

(1) Firstly it may be stated that by virtue of the Family Arrangement of 6th July, 1983 (copy enclosed) arrived at between all the four groups Sanghi Motors (Bombay) Ltd. i.e., the Bombay business was already divided in two lots. One lot consists of Sanghi Oxygen Ltd. i.e. its factory at Andheri and the tenanted office premises at Mathew Road, Bombay. The other lot consists of the remaining undertakings, business and assets etc. of the Company including Kota Oxygen at Kota. The two lots are as follows :

Lot No. 1 :

(a) Factory for the production of industrial gases and manufacture of plants for industrial gases at Andheri, Bombay together with its assets (which included a depot for the storage and sale of gas cylinders situated at Prabhadevi, Bombay);

(b) Tenanted premises situated at Mathew Road, Opera House, Bombay;

Lot No. 2 :

(a) Motor Division;

(b) Barge Division;

(c) Travel, Tours and Transport Division;

(d) Factory for manufacture of industrial gases at Kota together with all its assets;

(e) Show-room-cum-office at Hughes Road, Bombay;

(f) Two workshops at Prabhadevi, Bombay (excluding the depot referred to in (a) of Lot No. 1);

(g) Land admeasuring approximately 25,000 sq. metres together with structures thereon situated at M.I.D.C. area at Taloja;

(h) ownership flat at Darshan Apartments, Mount Pleasant Road, Bombay admeasuring about 1,500 sq. ft.

(i) Transport business carried on in the name of Safety Travels;

(j) ownership flat situated at Gamdevi Road, Bombay admeasuring about 500 sq. ft.

The Lot No. 1 has been given to M. K. Sanghi Group as its share and the other lot No. 2 has been given to R. K. Sanghi Group as its share.

(2) Accordingly the lots that are to be made by the Arbitrator will be subject to the division of Sanghi Motors (Bombay) Ltd. already effected and without disturbing it. Hence the suggestion for four equal lots is made on that basis. It is further to be ensured that the existing place or city of business is maintained in making and allotting the lots to the respective Group. However, for adjudicating and equating the four lots it may be necessary to include small portions of business and/or assets from place and/or city other than the place or city of business of the respective Groups;

(3) Thus firstly the following businesses and assets should be allotted and/or confirm having been already allotted as follows :

(a) Confirmed that Sanghi Oxygen with the office premises at Mathew Road to M. K. Sanghi Group (which is already been divided and allotted as stated in para 1 above).

(b) Sanghi Motors consisting of the business and assets mentioned in (1) above to R. K. Sanghi Group (which was already divided and allotted as stated in para 1 above).

(c) The business and assets at Delhi consisting of 50% share in Supreme Motors Ltd. and 50% share in Sanghi Motors (firm) should be allotted to A. K. Sanghi Group.

(d) All the businesses and assets in Rajasthan other than India Motors (Pvt.) Ltd. and a share in the firm of Sanghi Oxygen, Jaipur should be allotted to N. K. Sanghi

Group.

(4) The lot allotted to M. K. Sanghi Group does not constitute one fourth of the total businesses and assets but is less whereas the lot allotted to R. K. Sanghi is more than one-fourth of the total businesses and assets. The lot coming to the share of A. K. Sanghi Group also does not constitute one-fourth of the total business and assets but is less. thereforee necessary adjustments will have to be made from the businesses and assets at Bombay and Rajasthan, which are each more than one-fourth, for equalisation which is suggested as follows. In addition to the allotment of businesses and assets towards its one fourth share M. K. Sanghi Group has to be allotted assets of Rs. 15 lacs from the one-fourth share of R. K. Sanghi Group and assets worth Rs. 7.1/2 lacs each from the respective one-fourth share of A. K. Sanghi Group and N. K. Sanghi Group as provided by the Agreement dated 6.8.1984.

(a) The premises at Cadel Road, Bombay which are at present in occupation of M/s. Schlumberger Seaco should be allotted to M. K. Sanghi Group not only towards equalisation of the lots but also towards the additional assets of the value of Rs. 15 lacs to be given to M. K. Sanghi Group by R. K. Sanghi Group as provided in the Agreement of 6.8.1984.

(b) Indian Motors Pvt. Ltd. (Ajmer) and the plot of land belonging to Sanghi Brothers, Jodhpur situated at Badarpur, Near Delhi be allotted to A. K. Sanghi Group to bring the lot of A. K. Sanghi to one-fourth of the total business and assets.

(c) There remains the questions of allotment of additional assets of Rs. 7.1/2 lacs each from the share of A. K. Sanghi Group and N. K. Sanghi Group to M. K. Sanghi Group as provided in the Agreement of 6.8.1984. To achieve this respective shares of A. K. Sanghi and N. K. Sanghi Group in the partnership of Sanghi Oxygen, Jaipur be allotted to M. K. Sanghi Group;

5. The partition/division of family businesses and assets as stated above by way of an overall family arrangement can be achieved as follows :

Sanghi Motors (Bombay) Ltd. :

(a) The shareholding of R. K. Sanghi Group and M. K. Sanghi Group should be equalised i.e., that each group is given 748 equity shares. For this purpose it should be ordered and awarded that the shares in the said Company do stand transferred as provided in the First Schedule hereto. The respective Transferors be directed to deliver up to the respective Transferees duly executed transfer forms and share certificates and until such shares are transferred to the name of the Transferees in the records to the Company, the respective Transferors shall hold the said shares for and on behalf of and as trustees of the respective Transferees and shall exercise all rights including voting rights in respect of the said shares as directed by the respective Transferees. Mr. A. K. Sanghi and Mrs. Uma Sanghi shall cease to be the Directors of the Company and in their place one person nominated by R. K. Sanghi Group and the other nominated by M. K. Sanghi Group shall be the Directors of the Company.

(b) After what is provided in Clause (a) above is achieved by R. K. Group and M. K. Group should be directed to take steps and pass all resolutions to transfer to M. K. Sanghi Group or its nominee Company or firm the Lot No. 1 mentioned in para (1) above and the Cadel Road premises in possession of Messrs Schlumberger together with all liabilities relating to the business of the said Sanghi Oxygen. The account between Sanghi Oxygen and Sanghi Motors should stand settled and squared up neither having any claim against the other. Against such transfer M. K. Sanghi Group deliver up to Company all their shares viz., 748 shares. The said shares shall be cancelled subject to consequential reduction of the capital of the Company being approved by the Hon'ble High Court. Company Petition No. 128 of 1985 (M. K. Sanghi v. R. K. Sanghi and others), M. K. Sanghi be directed and authorised to make all necessary applications in that behalf to the court and execute all necessary deeds and documents to transfer the said assets to M. K. Sanghi Group or its nominee. R. K. Sanghi Group shall be ordered and directed to exercise all their rights including voting rights in respect of the said 748 shares that shall be held by it to give effect to what is provided in this clause and for effectively achieving this M. K. Sanghi and his wife Mrs. Manju Sanghi be appointed as proxy or proxies to exercise the voting rights in respect of the said 748 shares of R. K.

Sanghi Group (Proxy or Proxies to be irrevocable).

Supreme Motors Ltd., New Delhi : The shares in this Company be transferred by the respective Transferors to the respective Transferees as set out in the Second Schedule hereto. The respective Transferors be directed to deliver up to the respective Transferees duly executed transfer forms and share certificates and until such shares are transferred to the names of the Transferees in the records of the Company the respective Transferors shall hold the said shares for and on behalf of and as trustees of the respective Transferees and shall exercise all rights, including voting rights in respect of the said shares as directed by the respective Transferees.

India Motors Pvt. Ltd. : The shares in this Company be transferred by the respective Transferors to the respective Transferees as set out in the Third Schedule hereto. The respective Transferors be directed to deliver up to the respective Transferees duly executed transfer forms and share certificates and until such shares are transferred to the names of the Transferees in the records of the Company the respective Transferors shall hold the said shares for and on behalf of and as trustees of the respective Transferees and shall exercise all rights including voting rights in respect of the said shares as directed by the respective Transferees. All directors other than those of A. K. Sanghi Group shall cease to be directors of the Company.

Sanghi Motors, Jodhpur :

(a) The constitution of the firm shall be changed by retirement of the partners as set out in the Fourth Schedule;

(b) So far as the retirement of A. K. Sanghi HUF is concerned it may be directed that the said plot of land at Badarpur, Near Delhi, be given as a term of the retirement of the said HUF from the firm.

Rajasthan Theaters : The Constitution of the firm shall be changed by retirement of the partners as set out in the Fifth Schedule.

Sanghi Motors : Mr. Ashok K. Sanghi, Mr. Ratan K. Sanghi and Mr. Mahendra K. Sanghi shall be deemed to have retired from the firm and their respective shares shall stand transferred to Mr. A. K. Sanghi.

Sanghi Oxygen Company (firm) : Mr. Vijay Sanghi shall be deemed to have retired from the firm and his share transferred to Mr. Vaibhav Sanghi. Mrs. Rajni Sanghi shall be deemed to have retired from the firm and her share shall stand transferred to Mr. M. K. Sanghi, trustee of Ashwin Trust.

Western India States Motors Ltd. : The shares in this Company be transferred by the respective Transferors to the respective Transferees as set out in the Sixth Schedule hereto. The respective Transferors be directed to deliver up to the respective transferees duly executed transfer forms and share certificates and until such shares are transferred to the name of the Transferees in the records of the Company the respective Transferors shall hold the said shares for and on behalf of and as trustees of the respective Transferees and shall exercise all rights including, voting rights in respect of the said shares as directed by the respective Transferees. All directors other than those of late N. K. Sanghi Group shall cease to be directors of the Company.

6. It may generally be ordered and directed that the respective Groups shall be solely liable and responsible for the liabilities of the businesses and assets coming to their respective shares. Further, that all persons going out of the companies and/or firms, as the case may be, shall stand discharged from all liabilities of such Companies and firms and from personal guarantees, if any, that may have been given by them. So far as the partnership firms are concerned, it may be further ordered and directed that the respective continuing partners shall pay to the respective retiring partners the amounts, if any, that may be standing to the credit of such retiring partners in the books of account of such firms. Such payment to be completed not later than a period of 3 months from the date of this award.'

On 1.2.1987 A. K. Sanghi wrote to the Arbitrator as under :

'I regret, I am unable to attend your meeting today as I am unwell. However, I would like to bring the following for your notice and necessary action.

As per the alleged Arbitration Agreement, it is stated that each party can make four equitable blocks and submit them to you. It is absolutely essential to know of the assets and liabilities as well as profit earning capacity of each of the eight Units stated in the Agreement. I regret, I do not have the same except that of M/s. Supreme Motors Ltd.

I request you to please obtain the audited balance sheet, profits & loss account and details of unascertained liabilities, such as, income tax, sales tax, unpaid salaries, penalties, gratuity, bonus etc. payable by the companies and firms for the year ending in 1984, 1985 and 1986. Without these detailed information, it would be impossible for anyone, including yourself, to make any equitable block.

Please also send me copies of submissions and proposals that you may have received from other signatories to the Agreement through Ratan, the bearer of this letter.'

On 8.2.1987 A. K. Sanghi would appear to have written the following to the Arbitrator :

'As desired by you I give below the four groups as I deem fit and equal.

1. Mrs. Uma Sanghi & Family.

(1) 100% of M/s. Sanghi Bros., Jodhpur consisting of Picture Palace Udaipur, Dreamland Cinema Mhow and the assets and liabilities of the firm Sanghi Bros., Jodhpur but excluding the land of the firm at Badarpur, New Delhi.

(2) 100% M/s. Rajasthan Theatre consisting of the Ashoka Cinema at Udaipur and the automobile set up along with it.

(3) 100% M/s. India Motors Ltd., Ajmer.

(4) 100% M/s. W.I.S.M. Ltd. including Moti Mahal Cinema, Jaipur, the house at Beni Park, Jaipur the vacant land of about 10,000 sq. yds. behind the cinema and the Bungalow at Beni Park, Jaipur, Marudhar Oxygen factory at Jodhpur, and industrial plot of about 4,000 sq. yds. at Vishwakarma Industrial Estate and plots at Alwar and Udaipur i.e. all the assets of the Company excluding the building known

as United Motors or Rajasthan situated at Mirza Ismail Road, opposite Khas Kothi Jaipur.

(5) 32% total of Sanghi Oxygen Co. Jaipur 8% is already held by them and the other three Groups will withdraw from the firm.

(6) To receive 35 lakhs cash from Sanghi Oxygen Bombay.

2. Mr. A. K. Sanghi Group.

(1) 50% that is 500 shares of Supreme Motors, Ltd., New Delhi. The other 50% is held by another Sanghi Family i.e., sons of late Sohanlalji Sanghi.

(2) 50% share in the firm Sanghi Motors, New Delhi the other 50% is held by the sons of late Sohanlalji Sanghi.

(3) The building known as United Motors of Rajasthan situated at Mirza Ismail Road opposite Khasa Kothi at Jaipur free of all liabilities at present belonging to WISM Ltd.

(4) The plot of land measuring about 6,000 sq. yds. at Badarpur, New Delhi. About 3,000 sq. yds. of this land is tenanted at Rs. 125/- per month and has a petrol pump installed therein.

(5) To receive cash Rs. 35 lakhs from Sanghi Oxygen Bombay.

3. Mr. M. K. Group.

Sanghi Oxygen situated at Andheri with all land, machinery, cylinders etc. and with all its assets and liabilities belonging to Sanghi Motors, Bombay Ltd. and the tenanted property at Mathew Road. M. K. Group should pay to other three groups the following amounts. He has to receive 30 lakhs from the other three groups namely 15 lakhs from R. K. Group and 7.1/2 lakhs from Mr. N. K. Groups and A. K. Group respectively. thereforee after adjustment the actual amount payable by M. K. Group will be 70 lakhs only payable as follows :

-----					to Mr. N. K. Group 35 lakhs Mr.
A.	K.	Group	35	lakhs-----	Total 70
lakhs-----					4. Mr. R. K. Group.

(1) The Company known as Sanghi Motors Bombay Ltd. with all its assets excluding the Sanghi Oxygen Unit at Andheri and the tenanted property at Mathew Road. The assets with R. K. Group will be the show room at Hughes Road; two workshops at Cadell Road one owned property and other rented out. A unit at Taloja Industrial Estate; two residential flat and the factory for gases situated at Kotah. It is to inform you that value of assets and the profitability of the Sanghi Oxygen Bombay units is substantially more than that of Delhi & Rajasthan as can be seen from last five years Balance Sheet and Accounts which have been shown to you as such transfer of money has been made to Delhi at Badarpur.'

This was not accepted by R. K. Sanghi and M. K. Sanghi and according to them this had been inserted in the file. On 14.2.1987 M. K. Sanghi wrote to the Arbitrator in the following terms :

'On 7th February 1987, in the arbitration meeting before you, you had ordered that the parties to the arbitration may exchange their claims among themselves with 3 days. I am sorry to point out to you that despite your order, Mr. R. K. Sanghi, who was then personally present before you, refused to handover his claim made before you in exchange of my claim.

You are also aware that on 9th February 1987, Mr. R. K. Sanghi has filed his revised claim before you and you have further ordered that 22nd February, 1987, will be the last and final date for closing the arguments in the matter of arbitration before you.

You will appreciate that until such time that the copies of the claim dated January 1986 and the revised claim dated 9th February, 1987, filed before you by Mr. R. K. Sanghi are made available to me, it will be impossible for me to close my arguments before you on 22nd February, 1987. It is, therefore, requested that you may supply me the copies from your end immediately, failing which, I may be given liberty to make my final arguments before you as and when these copies are

made available to me, irrespective of 22nd February, 1987 being the final date ordered by you.

I am agreeable to reimburse the cost of these copies of documents should you incur any.

In the meantime, please take on your record my submission that the various allegations made by Mr. R. K. Sanghi in his claim of January 1986, and in the revised claim of 9th February, 1987, may not be considered by you, as the allegations which he has made before you are not the subject matter of reference before you, and in any event, they are on the face of it false and absurd.'

On 21.2.1987 R. K. Sanghi again wrote to the Arbitrator in the following terms :

'Mr. M. K. Sanghi has suggested that half of the Sanghi Motors (Bombay Ltd.) would consist of the following properties and businesses associated with them.

(a) Andheri Factory (Sanghi Oxygen).

(b) Mathews Road Office.

(c) Cadel Road Building, presently occupied by Schlumberger and now a part of the Motor Division.

(d) Gas Sales Department at Cadel Road Depot.

(e) Less Rs. 15 lacs.

(2) In my opinion the above properties contribute much more than 1/2 share and I would be more than happy to take the above block and still make deductions from this block.

(3) On the other hand I have advised by my letter of 21st January, 1986 that the Oxygen Division as it stands is heavier than Motor Division as it stands while M. K. Sanghi has taken a contrary view.

If I were given Oxygen Division as it stands, M. K. Sanghi was given the Motor Division as it stands, according to both of us we would get more than 1/2 of the

Bombay company. I have already given you accounts of the Motor Division in 4 sets for the years ended December 1984 and December 85. In case you are not able to obtain the accounts from M. K. Sanghi and Uma Sanghi my submission about these defalcations stand proved and you could make an award accordingly.

(5) In view of the foregoing, I suggest the following alternation :

(a) That you give me the Andheri block with Cadel Road Workshop as given above and I will not press to see the Oxygen Division accounts.

(b) That you give me the above block less items (c) and (d) but after I can see the Adheri Accounts. I had earlier stated that Andheri Block was heavier than Motor Division.

But I learn that during the last 2 years, M. K. Sanghi has removed almost all the movable assets of the Company and therefore it is possible that at this stage this may become weaker than Motor Division.

(c) Thereafter make further adjustments for share bought from Suresh, other unequal share holdings, defalcation done by Mr. & Mrs. Uma & other submission made by me/in my earlier letters.'

4. On 11.9.1987 in CA. 44/85 in C.P. 128/85 the Bombay High Court appointed Senior Master of the High Court as Receiver with reference to the Company Sanghi Motors. The Court directed the receiver to hold an auction to conduct the business as is where is condition and the auction was to be held on 3.10.1987 and the parties were permitted to bid in the auction. It is admitted by the parties that a day earlier i.e., on 2.10.1987 M. K. Sanghi, his son Vaibhav Sanghi, R. K. Sanghi, his son Nitin Sanghi, A. K. Sanghi, his son Vijay Sanghi, Uma Sanghi, her son Ashok Sanghi met in Bombay just to have the matters settled amongst themselves. Apparently, they thought that was an occasion to come to terms with reference to the matters in dispute. But the parties were so adverse and estranged amongst themselves that they could not come to any concrete settlement.

5. On 5.10.1987 the Receiver held the auction, the son of M. K. Sanghi, Vaibhav Sanghi gave a bid of an annual royalty of Rs. one crore. The son of R. K. Sanghi

i.e., Vijay Sanghi gave a bid for Rs. 95 lakhs. Naturally, the bid of Vaibhav Sanghi was accepted.

6. On 6.10.1987 an agreement was entered into between the Receiver appointed by the Bombay High Court and the Vitissee Trading Pvt. Ltd., owned by M. K. Sanghi Group and the business was being conducted in Bombay.

7. On 3.11.1987 B. N. Kirpal, J. (as His Lordship then was) passed an order in OMP 23/86 directing the Arbitrator H. K. Sanghi to make and publish the award without prejudice to the rights of the parties and the matter was adjourned to 4.12.1987. I perused the records of this court. On 4.11.1987 notice was issued dusty to the Arbitrator H. K. Sanghi. On 20.11.1987 M. K. Sanghi wrote to the Arbitrator making wild allegations against him in the following terms :

'It is with regret that I have to record as follows :

You are aware that pursuant to the Orders of the Bombay High Court, a Receiver has been appointed of Sanghi Motors (Bombay) Ltd., with the direction that he should hold an auction for giving the Company on Conducting basis to the shareholder who gives the highest bid.

After this order and day prior to the auction which was directed to be held on 3rd October 1987, certain agreement was reached between the members of all the four groups, i.e., N. K. Group, A. K. Group, R. K. Group and my group. What was agreed to was also reduced to writing on stamped document and all the parties had agreed to assemble for executing the agreement recording what was agreed to. However, A. K. Group and R. K. Group did not remain present at the appointed time. Even the auction was postponed from 3rd to 5th October, 1987, at the request of A. K. Group and R. K. Group, as they indicated their willingness to sign the documents and sent their representatives to Jodhpur and Jaipur for taking possession of certain properties as per that agreement. Nothing however happened, as a result of which, auction was held on 5th October, 1987, when my group having given the highest bid was given the Company on conducting basis.

It is curious that soon after this, even A. K. Group withdrew its objection petition with regard to arbitration before you, which was pending in Delhi High Court, and obtained directions that you should publish the Award. It is still further curious that soon after this, you as Arbitrator, who are supposed to be beyond all suspicions and doubt like 'Ceaser's Wife', obviously at the instance of A. K. Group and R. K. Group proceeded to Jaipur on 19th November, 1987, with a view to procuring some writing from Mrs. Uma Sanghi the head and representative of N. K. Group, so that thereafter with the help of that writing and with the connivance of A. K. Group and R. K. Group, some mischief could be done to affect my rights and interest including that in the Bombay Company.

This is nothing short of a fraud sought to be perpetrated against me by A. K. Group and R. K. Group through your officers as Arbitrator and which, I am sorry to say, you have agreed to be a party to.

This is therefore to record that if any 'Award' or 'Direction' is given by you which is inconsistent with what has always been agreed and understood between the members of the four groups or an award which in any way deals with the Bombay Company or shares relating to Bombay Company, it would be unlawful and not binding.'

8. On 17.12.1987 when the Arbitrator brought to the notice of the court through Counsel that he had filed the award into the court on that day and this court issued notice to all the parties.

9. On 13.1.1988 M. K. Sanghi filed I.A. No. 894/88 in O.M.P. 23/86 to set aside the award dated 3.12.1987.

10. On 16.3.1988 A. K. Sanghi Group filed Suit No. 581A/88 under Section 17 of the [Arbitration Act, 1940](#) for passing a decree in terms of the award. The plaintiffs in that suit filed an application for injunction restraining the defendants from transferring or parting with possession of the properties, subject matter of the arbitration award.

11. On 8.4.1988 Manju Sanghi w/o. M. K. Sanghi filed I.A. 1991/88 for setting aside the award.
12. On 8.4.1988 Vaibhav Sanghi filed I.A. 1769/88 for setting aside the award.
13. On 8.4.1988 Ashavin Sanghi filed I.A. 1770/88 for setting aside the award.
14. On 11.4.1988 I.A. 7772/88 was filed by R. K. Sanghi for setting aside the award (R. K. Sanghi was the first respondent in O.M.P. 23/86).
15. On 12.4.1988 Nitin Sanghi s/o R. K. Sanghi adopted the objections filed by respondent No. 8, respondent No. 10 and respondent No. 11 in Suit No. 581A/88.
16. On 19.4.1988 respondents No. 13 to 17 M. K. Group filed their written statements challenging the award.
17. On 22.4.1988 R. K. Sanghi, 8th respondent in the suit, filed his written statement. On the same date his wife and children respondent Nos. 9, 10, 11 and 12 filed their written statements.
18. On 4.5.1988 the ad-interim order passed in Suit No. 588A/88 was made absolute.
19. On 27.3.1989 an order was passed by this court in O.M.P. 23/86 transposing petitioners No. 1 to 7 (A. K. Sanghi Group) as respondents No. 8 to 14. The order reads as follows :

'As request has been made by Mr. Mukul Rohtagi Counsel for petitioner No. 8 to 11 that now there was a clash of interest between the petitioners No. 8 to 11 and petitioners No. 1 to 7. He, therefore, prays that the petitioners No. 1 to 7 be transposed as respondents. Learned Counsel for respondent No. 1 opposes this request as his contention is that petitioners No. 1 to 7 have already made some admissions in the petition under Section 33 of the Arbitration Act they cannot be allowed to resile from those admissions.

I have carefully considered the contentions of the parties. For the proper trial of the case I think it would be proper if the petitioners No. 1 to 7 were transposed as

respondents No. 8 to 14. This is without prejudice to the contention of the respondent No. 1 and this order would have no effect on the question of the effect of the admissions made, if any, petitioners No. 1 to 7 in the main petition under Section 33 of the Arbitration Act. It was pointed out that the evidence is complete in the O.M.P. as well as Suit No. 581-A/88. This petition is closely connected with Suit No. 581-A/88. Amended Memo of parties be filed within a week.

Costs have been paid by Mr. Ashok Grover to Mr. S. P. Aggarwal today in Court.

If for any purposes any of the parties want to file any application it must be filed within 2 weeks from today.

List it for arguments on 9th May, 1989.'

20. On 6.7.1989 final orders were passed by the Bombay High Court in C.P. 128/85 on the basis of the scheme of reconstruction given by the parties.

21. A. K. Sanghi filed an application C.A. 228/89 on 14.8.1989 in C.P. 128/85 claiming certain reliefs in that petition. Ajay Sanghi filed affidavits in support of the application.

22. On 21.8.1989 Sanghi Motors (Bombay) Ltd. (M. K. Sanghi Group) filed O.M.P. 109/89 challenging the award under Section 33 of the [Arbitration Act, 1940](#) in this court.

23. On 12.12.1989 order was passed by the Bombay High Court in C.A. 228/89 rejecting the claim of A. K. Sanghi.

24. A. K. Sanghi Group filed an appeal to the Division Bench in the Bombay High Court against the order dated 6.7.1989 by the Single Judge in C.P. 128/85. On 30.6.1992 the Appeal O.S.A. 350/92 was dismissed by the Division Bench. The order reads as follows :

'(1) This is an appeal preferred by original respondents Nos. 6 to 14 in Company petition No. 128 of 1985 to challenge legality of order dated July 6, 1989 passed by the Company Judge in a petition under Sections 397 and 398 of the Companies Act. By the impugned order the Company Judge sanctioned the scheme.

(2) Chandrachud, learned Counsel for the appellants, complained that the company Judge was in error in sanctioning the scheme without issuing notices to the appellants in their capacity as share holders. There is no merit whatsoever in this contention. Respondents Nos. 6 to 13 were parties to the petition and were duly served and had appeared before the Company Judge. The appellants thereafter decided not to participate in the proceedings. It is futile therefore to claim that the Company Judge ought to have served fresh notice on the appellants in their capacity as shareholders. The submission, in our judgment, is nothing but a desperate attempt to avoid the scheme.

(3) The second contention urged by the learned Counsel is with reference to Clause 13 of the scheme. The parties in the Company Petition are family members and a dispute about family properties was referred to the arbitration. The Arbitrator had declared his award and the appellants had instituted Suit No. 581A of 1988 in Delhi High Court for decree in terms of the award. Clause 13, inter alia, provides that in the event of such a decree being finally passed, then the scheme of reconstruction shall be binding on the petitioner, respondents Nos. 1 to 5 and 20 to 27 notwithstanding such decree. Mr. Chandrachud submitted that such a direction should not have been given because the decree in terms of the award, if passed, would be binding upon everyone and consequently the scheme of reconstruction cannot override the decree. The submission proceed on the misconception. The decree, if passed, can be enforced by respondents No. 6 to 14 against all other parties to the arbitration proceedings and consequently the decree cannot bind the Companies. Mr. Chandrachud submitted that the scheme sanctioned by the Company Judge provides for transfer of certain interests and those interests could not have been ordered to be transferred in view of the order of injunction granted by Delhi High Court pending disposal of the suit. We are unable to find any merit in the submission, because the right to get the transfer is provided by the scheme and actual transfer will be effected only after the injunction comes to an end. The order of injunction is passed pending the suit and cannot remain in operation for all time to come. In our judgment, the complaint against Clause No. 13 is without any foundation.

(4) The next contention urged by Mr. Chandrachud is that Clause 14 provides that in the event of the arbitration award being set aside by the Delhi High Court, respondents Nos. 6 to 14 shall have an option to require the petitioner to either purchase the 322 equity shares in the Company at a price to be arrived at on the basis of the valuation or to exchange the shares in the Company with the shares held by the petitioner and his companies. The learned Counsel submitted that the date as to when the valuation should be settled is not provided and therefore Clause 14 is bad. The submission is entirely incorrect. The right to confer to seek valuation is contingent right dependent upon the award being set aside. The shares being equity shares of the Company, the valuation has to be on the date on which the option will be exercised and it can by no stretch of imagination, as contended by Mr. Chandrachud, on the date of sanctioning of the scheme. In our judgment, the demand, of the appellants that the valuation should be that of the date of sanctioning of the scheme is required to be repelled.

(5) Mr. Chandrachud finally submitted that Clause 4 of the scheme directs the receiver to hand over the charge and possession of the Company to the petitioner Mahendra Kumar Sanghi. It was contended that the Company had entered into an agreement with an outsider and in respect of which a substantial amount was recovered. Mr. Chandrachud urged that direction to hand over the assets and funds to the petitioner is bad. The submission proceeds on the assumption that the direction in Clause 4 is to hand over the assets and funds to the petitioner in his personal capacity. The direction, in our judgment, is extremely clear and the funds and assets are handed over to the Company and the petitioner is permitted to receive it on behalf of the Company. In our judgment, there is no infirmity whatsoever in the scheme sanctioned by the Company Judge and the appeal is devoid of any merit.

(6) Accordingly, appeal is summarily dismissed.'

25. On 23.8.1995 M. K. Sanghi Group filed further affidavit enclosing the order dated 5.9.1994 passed by Milap Chand Jain, J. in C.P. 6/86 in the Rajasthan High Court. The order dated 6.9.1994 and also the scheme of reconstruction approved in C.P. 6/86 were also enclosed. It is stated in the affidavit that in the light of these

facts the award of the Arbitrator is liable to be set aside.

26. Now the position is, A. K. Sanghi Group and Uma Sanghi Group (N. K. Sanghi Group) pray for a decree in terms of the award.

27. R. K. Sanghi Group and M. K. Sanghi, they challenge the award. therefore, the contest is evenly balanced.

28. In the light of this position, I have to start from the averments in O.M.P. 23/86 which was the first proceedings after Uma Sanghi filed O.M.P. 25/85 for extension of time for passing the award and O.M.P. 23/86 was filed by the children of A. K. Sanghi and the children of R. K. Sanghi challenging the award. Before I notice the respective submissions of the learned Counsel appearing for the parties, I have to survey the pleadings briefly so that a clear picture may emerge showing the respective contentions of the parties.

29. In O.M.P. 23/86, there are 11 petitioners. They are as follows :

(1) Vijay Kumar Sanghi.

(2) Ajay Kumar Sanghi.

(3) Mrs. Mithlesh Kumari Sanghi.

(4) Mrs. Deepika Sanghi.

(5) Mrs. Ritu Sanghi.

(6) Ms. Apoorva Sanghi (minor).

(7) Master Anuj Sanghi (minor).

(8) Mrs. Pushpa Sanghi.

(9) Nitin Sanghi

(10) Mrs. Deepa Kejriwal.

(11) Mrs. Mala Goenka.

Petitioners No. 1 to 7 are the children and grand children of A. K. Sanghi and petitioners No. 8 to 11 are the wife and children of R. K. Sanghi.

30. The respondents are seven in number. Respondent No. 1 is R. K. Sanghi, respondent No. 2 is M. K. Sanghi, respondent No. 3 is A. K. Sanghi, respondents No. 4 to 7 are the wife and children of N. K. Sanghi. As I had pointed out earlier, this petition was filed on 31.1.1986. It is stated in the petition that the arbitration is not valid and not in existence and it is not binding on the petitioners. The consent of the petitioners was not taken for the arbitration. The signatories to the arbitration agreement namely, the four brothers, did not hand over documents, as per the arbitration agreement and the arbitration agreement was not acted upon. The petitioners and many shareholders in the firm and the Companies had not agreed to the arbitration. Respondent No. 3 is not even a partner in Sanghi Oxygen Jaipur and Rajasthan Theatre at Jodhpur. First respondent R. K. Sanghi is not a partner in Rajasthan Theatre. Hence respondents No. 1 and 3 have no right or power to enter into any arbitration agreement. There is a litigation pending in this court in respect of Supreme Motors Ltd. and Sanghi Motors Ltd., New Delhi in Co. Appeal No. 14/81 and Suit No. 594/80 and Suit No. 1654/82. There are third parties to the litigation and they have not been made parties to the arbitration agreement. therefore, the arbitration agreement should be declared invalid and non-existent.

31. In Sanghi Brothers, Jodhpur the family members are partners. In Rajasthan Theatre family members are partners. In Sanghi Motors, New Delhi three out of seven are partners, Suresh Kumar Sanghi, Satish Chand and Sharad Kumar Sanghi are outsiders and not family members. In Sanghi Oxygen, Jaipur the following are outsiders :

(1) Devi Dayal Modi.

(2) Anil Kumar Modi.

(3) Jaswant Kumar Modi.

(4) Rattan Kumar Modi.

(5) Shiv Kumar Modi.

(6) Naresh Kumar Modi.

(7) Smt. Prem Modi.

In Western Indian States Motors Ltd., Jodhpur, the following three persons are outsiders :

(1) Mrs. Madhu Jajadia.

(2) Suresh Kumar Sanghi.

(3) Satish Sanghi.

In Supreme Motors Ltd., New Delhi, the following shareholders are outsiders :

(1) Suresh Kumar Sanghi (HUF).

(2) Suresh Kumar Sanghi.

(3) Mrs. Bhagawati Sanghi.

(4) Rajesh Sanghi.

(5) Ms. Anuradha Sanghi.

(6) Satish Chandra Sanghi (HUF).

(7) Satish Chandra Sanghi.

(8) Master Rohit Kumar Sanghi.

(9) Master Rohit Kumar Sanghi.

(10) Ms. Radhika Sanghi.

(11) Sharad K. Sanghi.

(12) Mrs. Geeta Sanghi.

(13) Mrs. Seema Jain.

M/s. Sanghi Beverages Pvt. Ltd. In Sanghi Motors (Bombay) Ltd., following persons held 128 shares :

(1) Suresh Sanghi (HUF).

(2) Suresh Sanghi.

(3) Rajesh Sanghi.

(4) Sharad Sanghi.

(5) Satish Sanghi.

therefore, according to the petitioners the outsiders had not given any consent for arbitration.

32. A. K. Sanghi filed his counter on 6.10.1986. He supported the case of the petitioners. Inter-alia, he said 'Arbitration agreement under these circumstances is not binding on the persons other than parties to the arbitration agreement and no useful purpose would be served if the arbitration is allowed to continue.' In paragraph 6 of his reply, he stated thus :

'Para 6 of the petition is substantially correct. It is further submitted that besides the petitioner there are several other persons other than the parties to the arbitration agreement, whose interests are likely to be effected by the award of Shri H. K. Sanghi. The said persons never agreed to refer the disputes to the Arbitrator and no useful purpose would be served if the Arbitrator is allowed to continue the proceedings and give the award which will not be binding on the said persons.'

He also refers to the agreement dated 10.2.1985 between Uma Sanghi Group and R. K. Sanghi in and by which they had agreed to exchange the shares of Sanghi Motors (Bombay) Ltd. with the shares of Western Indian States Motors Ltd., Jaipur. By this they had committed breach of clause 3 of the arbitration agreement dated 6.8.1984. R. K. Sanghi has filed the suit for specific performance in this court. Ms. Uma Sanghi during the pendency of the arbitration proceedings had transferred 8 shops of Picture Palace, Udaipur by granting long lease of 99 years

to third parties. On 1.3.1986 Uma Sanghi had entered into an agreement to lease the Dreamland Cinema at Rajasthan to one Ramji Lal Sharma. Respondents No. 4, 5 and 6 had violated the terms of arbitration agreement. therefore, according to A. K. Sanghi O.M.P. 23/86 should be allowed and the declaration prayed for should be granted.

33. Vijay Kumar Sanghi s/o. A. K. Sanghi filed an affidavit by way of evidence in the O.M.P. dated 27.1.1987. In this affidavit he has referred to the agreement dated 16.12.1985 between R. K. Sanghi and Uma Sanghi and others, the Suit No. 920/86 filed by R. K. Sanghi against Uma Sanghi, having entered into an agreement to sell dated 16.12.1985 with R. K. Sanghi, Uma Sanghi and her children sold those shares to M. K. Sanghi by delivering the shares scripts with blank transfer forms duly executed, that M. K. Sanghi transferred his and family shares in WISM Ltd., Jodhpur to Uma Sanghi by handing over the shares scripts with blank transfer forms, that the same is proved by the averments in I.A. 4639/86 dated 12.8.1986 filed by M. K. Sanghi in Suit No. 920/86, filed by R. K. Sanghi, that one Cinema called Dreamland situated at a place called Mhow in the State of Rajasthan was given on long lease to one Ramji Lal by Uma Sanghi Group, that in violation of the Clause 4 in arbitration agreement, Uma Sanghi had given 8 shops situated at Udaipur belonging to Sanghi Bros., Jodhpur on 99 years' lease to a third party with a further right of renewal for the same period, that Uma Sanghi Group on 13.6.1985 created an equitable mortgage with reference to immovable property owned by United Motors of Rajasthan, Jaipur with Oriental Bank of Commerce, Jaipur, this United Motors of Rajasthan was a division of the Company W.I.S.M. that Uma Sanghi had sold away the hypothecated goods with Oriental Bank of Commerce, Jaipur and the sale proceeds had been appropriated by her that he has also referred to all acts done by the parties in flagrant violation of the terms of the arbitration agreement. As I had pointed out earlier on 16.3.1988 A. K. Sanghi Group filed Suit No. 581A/88 under Section 17 of the [Arbitration Act, 1940](#) for passing a decree in terms of the award passed by the Arbitrator. In the petition nothing is mentioned about the bargains. In paragraph 9, the petitioners state 'that the petitioners do not wish to challenge the said award and accept the same. The petitioners No. 1 to 10 also do not wish to further prosecute the petition under Section 33 of the [Arbitration Act, 1940](#) challenging the validity of the arbitration

agreement dated 6.8.1988 being O.M.P. 23/86'. R. K. Sanghi filed his reply to the petition on 22.4.1988. In the reply the respondent No. 8 challenges the arbitration agreement and also the award of the Arbitrator. Paragraph 6 of the reply is relevant and same reads as follows :

'That on an inspection taken of the proceedings filed by the Arbitrator in this Hon'ble Court in O.M.P. 23 of 1986 the answering respondent was surprised to find that certain documents emanating from the petitioner No. 1, more particularly, his alleged proposal and his letter giving the names of the family members of the four brothers as being beneficiaries under the said four brothers, both dated 8.2.1987 have been made a part of the proceedings by the Arbitrator. The answering respondent submits that no such documents were ever submitted by the petitioner No. 1 nor does the diary of the proceedings of the Arbitrator dated 8.2.1987, 9.2.1987 or of any other subsequent date mentions that these documents were submitted by the petitioner No. 1. The answering respondent states that the petitioner No. 1 had never participated in the proceedings on these dates or any other dates. The said documents were obviously obtained by the Arbitrator long after the proceedings were finally concluded and thereafter in collusion with each other the Arbitrator and the petitioner No. 1 have interpolated these documents in the proceedings. It may also be pertinent to point out that the proposals submitted by the answering respondent the respondent No. 1 and the respondent No. 13 have been authenticated by other parties except the petitioner No. 1 by putting their respective signatures thereon, whereas the said proposal allegedly submitted by the petitioner No. 1 has not been initialled even by the Arbitrator himself, much less by the other parties. It is thereforee obvious that in pursuance of certain secret understanding and in collusion with each other, the Arbitrator has interpolated these documents at a much alter date and in any case, long after the proceedings were finally concluded. The petitioner and the Arbitrator have thus connived and colluded with each other for making and publishing a completely biased, partial, illegal and unenforceable Award. In order to regularise the aforestated illegality the Arbitrator has also procured the signatures of the petitioner No. 1 on the diary of the proceedings of the 1st, 8th and 22nd of February, 1987 at a subsequent date. The Arbitrator has thus not only committed serious misconduct, but the entire proceedings have thereby been vitiated and

rendered illegal. In the circumstances the answering respondent submits that the Award is illegal and is liable to be set aside.'

Respondents No. 13 to 17 N. K. Sanghi Group filed the reply challenging the arbitration award. As I had noted above, on 23.8.1995 M. K. Sanghi filed further affidavit bringing to the notice of this court the scheme passed by the court in Rajasthan and also High Court in Bombay. Paragraph 3 of the affidavit is relevant and it reads as follows :

'3. That the alleged scheme of reconstruction-cum-family settlement is collusive and a result of a conspiracy between the A. K. Sanghi Group, the N. K. Sanghi Group and the R. K. Sanghi Group is evident from the following facts.

(a) A mere perusal of the alleged scheme reveals that the same has been devised to personally aggrandize the A. K. Sanghi Group, the N. K. Sanghi Group, and the R. K. Sanghi Group themselves and inter se distribute between them the valuable assets of WISM and the other several partnership concerns to the obvious detriment of not only Respondent Nos. 13 to 17 herein but also the other substantial creditors of the various concerns and the public.

(b) The illegal scheme of reconstruction-cum-family settlement has varied and/or modified in toto, the purported Award allegedly dated 3rd December, 1987 which is the subject-matter of the present suit. For the sake of brevity, a detailed comparison and note on how the alleged scheme of reconstruction-cum-family settlement has in fact varied and/or modified, the purported Award filed in this Hon'ble Court is hereto annexed and marked Exhibit '2'.

(c) In particular Clause 13 of the alleged scheme of reconstruction-cum-family settlement contains a soleman undertaking given by the A. K. Sanghi Group through Mr. A. K. Sanghi to the Hon'ble High Court of Rajasthan to unconditionally withdraw the present suit filed by the A. K. Sanghi Group in this Hon'ble Court. Instead of withdrawing the suit the said A. K. Sanghi filed an application with only some members of his group to withdraw only I.A. No. 1361 in the present suit and for vacating the interim order and injunction dated 16th March, 1988 (which order was subsequently confirmed by an order dated 4th May, 1988) passed by this

Hon'ble Court. After filing the said application viz. I.A. No. 459 of 1995, A. K. Sanghi put up his son V. K. Sanghi to oppose the said application as a result of which even the application to withdraw I.A. No. 1361 of 1988 was not allowed by this Hon'ble Court. In fact, Mr. A. K. Sanghi and his family members, that is other than the said Mr. V. K. Sanghi and his family members, were transposed as party respondents to the present suit. This entire charade is transparent and with a view to deprive Respondents No. 13 to 17 hereto and Sanghi Motors (Bombay) Ltd. of their valuable rights and assets. It is pertinent to note that whereas in this Hon'ble Court V. K. Sanghi and the members of his family have purported to oppose the said I.A. No. 459 of 1995 filed in the present suit they have not bothered to challenge the alleged scheme or reconstruction-cum-family settlement filed in the Hon'ble High Court at Rajasthan notwithstanding the fact that V. K. Sanghi is a party to the said Company Petition No. 6 of 1986. Respondent No. 13 herein has preferred an appeal against the order dated 5th September, 1994 and 6th September 1994 respectively sanctioning the alleged scheme of reconstruction-cum-family settlement in the Hon'ble High Court at Rajasthan. So also Respondent No. 3 herein has preferred a separate appeal against the said order and the said scheme;

(d) A mere perusal of the alleged scheme of reconstruction-cum-family settlement reveals that the same is a consent scheme of reconstruction cum family settlement. Thus, it is submitted that the same is in the teeth of the order of injunction dated 16th March, 1988 (which order was subsequently confirmed by an order dated 4th May, 1988) passed by this Hon'ble Court in I.A. No. 1361 of 1988 in the present suit and which order is as follows :

'All the parties to the present proceedings, who are parties to the award, including the members of the respective groups be restrained by interim injunction from transferring, parting with, alienating of, leasing out the said properties mentioned in the award including the shares of the said partnership and company businesses in any manner'. It is submitted that the A. K. Sanghi Group, the N. K. Sanghi Group and the R. K. Sanghi Group have in contumacious disregard for the orders of this Hon'ble Court committed a breach thereof and are in contempt of this Hon'ble Court. These respondents therefore submit that this Hon'ble Court ought to direct

the petitioners herein, the N. K. Sanghi Group and the R. K. Sanghi Group to purge the contempt, inter alia, by the petitioners herein withdrawing the present suit unconditionally.'

34. I do not want to refer to the pleading in the applications filed by the parties challenging the award and the other applications and the O.M.Ps. and O.M.P. 109/85. Learned Counsel Mr. Sathe appearing for M. K. Group submitted that the arbitration award cannot at all be sustained in view of the scheme of arrangement made by the Company Court in Bombay with reference to the properties in Bombay and the Rajasthan High Court with reference to a few properties in Rajasthan, the Arbitrator has not at all considered the objections raised before him by M. K. Sanghi Group and R. K. Sanghi Group and the parties had focussed the attention of the Arbitrator to various disputes between the parties and they had requested the Arbitrator to decide those disputes also so that there could be a complete adjudication. It was also brought to the notice of the Arbitrator, that Uma Sanghi Group, R. K. Sanghi Group had acted in violation of the terms of Clause 4 of the arbitration agreement, that the division made by the Arbitrator runs counter to the scheme of the reconstruction approved by the Bombay High Court which was accepted by the parties and that the Arbitrator had misconducted himself by visiting Rajasthan without the knowledge of M. K. Group and R. K. Group. Letter dated 27.11.1987 written by M. K. Sanghi to the Arbitrator he has not given any reply and Uma Sanghi had also not controverted the same and the Arbitrator had colluded with A. K. Sanghi Group by making it appear as if there were two awards prepared by him and they made a false report to the court that he did not receive the order dated 3.11.1987 passed by this court, Mr. Sathe laid emphasis on the fact that A. K. Sanghi Group, R. K. Sanghi Group and Uma Sanghi Group had filed a scheme of reconstruction in the Rajasthan High Court which I had already referred to and therein A. K. Sanghi categorically admitted to withdraw Suit No. 581A/88 and that was an undertaking given before a High Court and A. K. Sanghi cannot now say that he wants to press the same and that this court may pass a decree in terms of the award. Mr. Milind Sathe also submitted that on 16.12.1985 when Uma Sanghi entered into an agreement with R. K. Sanghi she undertook to withdraw O.M.P. 28/85 which she filed for extension of time and on 18.12.1985 her Counsel pressed the petition and got in extension of time. Under these

circumstances, learned Counsel Mr. Sathe submitted that the award has to be set aside.

35. Mr. S. P. Aggarwal learned Senior Counsel appearing for A. K. Sanghi Group submitted that the power of this court under Section 30 of the [Arbitration Act, 1940](#) is very much limited and circumscribed. According to the learned Senior Counsel there is no error apparent on the face of the record and there is no misconduct by the Arbitrator. Mr. Sathe also submitted that the award deals with rights of parties in immovable properties and, therefore, it requires registration and inasmuch as it is not registered the petitioners cannot claim the relief prayed for by them.

36. Mr. S. P. Aggarwal submitted legal propositions and list of authorities in support of his submissions on behalf of A. K. Sanghi Group. He formulated his submissions in the following manner :

(1) The award does not require registration under Section 17 of the Registration Act, 1908.

(2) The reasonableness of the award cannot be gone into as the Court does not sit in appeal and the court cannot reassess evidence assuming the conclusion is erroneous and reaching an erroneous conclusion would not tantamount to misconduct.

(3) If there is any mistake of law and on fact not apparent on the face of record remitting or setting aside of the award is not warranted. The award is inconsonance with equity, fair play and principles of natural justice and the Arbitrator had followed the terms of the agreement.

(4) The award is unreasonable one and that cannot be challenged.

37. The respondents cannot rely upon the outcome of the proceedings in Bombay High Court and Rajasthan High Court because those proceedings did not include the whole of the subject matter of the arbitration within the meaning of Section 35 of the [Arbitration Act, 1940](#). The arbitration agreement is binding on all parties because a manager of a Joint Hindu Family can make reference to arbitration without joining the other members, the jurisdiction of the Company court under

Sections 397 and 398 of the Companies Act, 1956 would not exclude the jurisdiction of the Civil Court, the principles of dissolution of partnership are applicable to Companies also. The learned Senior Counsel faintly contended that the Arbitration and Conciliation Ordinance, 1996 (now the Act) may be applied to the instant case and by virtue of Section 34 of the Ordinance the award automatically becomes a decree under Section 36. (now The [Arbitration and Conciliation Act, 1996](#)).

38. I have no hesitation in rejecting the last submission because the Act would not apply to this case and we are governed by the principles of the [Arbitration Act, 1940](#).

39. Though the learned Senior Counsel Mr. Aggarwal canvassed before me the various authorities and the principles laid down therein. I feel that exercise is not necessary in this case in view of the undertaking given by A. K. Sanghi Group to which Uma Sanghi Group was a party and that concludes the issue before me. The undertaking as mentioned in Clause 13 of the Scheme of Reconstruction-cum-family Settlement reads as follows :

'That Shri A. K. Sanghi and his family members have filed a petition in Delhi High Court for making the Award of the Arbitrator dated 3.12.1987 as rule of the Court being Petition No. 581A of 1988, Shri A. K. Sanghi hereby undertakes to withdraw the said proceedings unconditionally and all the parties further agree that they shall abide by the terms of this Scheme of reconstruction.'

When a party had given a solemn undertaking before a court of law it is not open to that party to approbate and reprobate. It is a basic principle of law that ALLEGANS CONTRARIA NON EST AUDIENDUS (he is not to be heard who alleges things contradictory to each other, I had referred to the entire facts and pleadings by the parties just only to high-light the circumstances under which the parties had been litigating before me and in view of this categorical undertaking given and in the light of the scheme of reconstruction by the Bombay High Court and Rajasthan High Court and in the context of the conduct of the parties acting without any kind of restraint discipline to adhere to Clause 4 of the agreement, I don't think the award could be sustained and, in my view, it is liable to be set

aside. The Arbitrator had also not adjudicated on all the disputes and he had dealt with the matter in a very casual way and on a consideration of the entire matter in the setting in which M. K. Sanghi came to write the letter dated 27.11.1987. I am not able to resist the feeling that the Arbitrator had not acted fairly in dealing with the work assigned to him by the parties and he had not acted consistent with the confidence reposed in him by the parties.

40. Accordingly Suit No. 581A/88 is dismissed. The award is set aside. I.As. 894/88, 1769/88, 1770/88, 1771/88 and O.M.P. 109/89 are allowed. O.M.P. 23/86 is dismissed as being not necessary. The parties shall bear their respective costs.

Suit No. 581A/88 is dismissed/I.As. 894/88, 1769/88, 1770/88, 1771/88 and O.M.P. 109/89 allowed/O.M.P. 23/86 is dismissed.

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