Bombay High Court Vijaya Bank vs Maker Development Services Pvt. ... on 14 March, 2001 Author: B B Srikrishna. Bench: B Srikrishna, S Bobde JUDGMENT B. B. Srikrishna. J. 1. This appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") challenges the order of the learned Single Judge, dated 6th/7th November, 2000 dismissing the petition to set aside the arbitral Award. FACTS 2. The facts giving rise to the present appeal, concisely stated, are as under :- The appellant is a nationalised bank, carrying on the business of banking in its various branches and offices in the city of Mumbal. The respondent is a company registered under Companies Act, 1956 doing business in real estate including the business of hiring out built up areas of business premises. The respondent, at the material time, was the owner of certain premises situated on the ground floor and basement of Maker Chamber No. IV. Nariman Point. Mumbai 400 021. These premises were offered to the appellant under agreements of leave and licence dated 23rd May. 1988 and 27th June, 1989. Under the agreement of 23rd May, 1988 an area of 6078 sq. ft. on the ground floor and 620 sq. ft. in the basement of the suit property was given on leave and licence basis for a period of ten years. An amount of Rs. 2,75,00,000/- was paid by the appellant to the respondent as advance payment under the agreement which was to carry interest at the rate of 15% per annum with quarterly rest and was liable to be adjusted towards the compensation during the last five years of the licence period. The compensation for use of the aforesaid premises was fixed at the rate of Rs. 362,500/- per month for the first five years and at the rate of Rs, 4,71,250/- per month for the second term of five years. 3. Under a Supplemental agreement dated 23.5.1988 the Respondent agreed to provide certain services to the Appellant. Under the agreement of 27.6.1989 an area of 2195 sq. ft, was given on leave and licence on monthly compensation of Rs. 1,42,675/- from the date of the agreement to 30.6.1994 and at the rate ofRs. 1.8.500/- from 1.7.1994 to 31.3.1998. 4. Under Clause 22 of the agreement dated 23rd May, 1988. It was inter alia, agreed as under :- "If at the expiry of the period reserved under this Agreement or on the happening of the contingency hereinabove envisaged the Licensee is unable to deliver the possession of the licensed premises to the Licensor for any reason whatsoever then at the option of the Licensor, to be expressed by at a notice of 15 days duration and to be served upon the Licensee, the Licensee doth hereby agree to purchase 'the licensed premises from the Licensor on ownership basis at a price prevailing at the relevant time to be determined by M/s. K. G. Kapadia & Co. presently having their office at 3rd floor, Maker Chamber III, 223 Nariman Point, Bombay 400021 jailing which by M/s. I. M. Kadri having their office at Shivsagar Estate, Annie Besant Road, Bombay 400 018 and falling both of them by such Government approved valuers and surveyors as the Licensor may appoint and which price shall be ascertained on the relevant date on the basis of and with reference to the mutually accepted present base price at the rate of Rs. 12,500/- (Rupees Twelve Thousand five Hundred Only) per sq.ft. of built up area in respect of the ground floor premises and Rs. 3000/- (Rupees Three thousand only)(per sq. ft. of the basement premises, aggregating to Rs. 7,78,35,000/- (Rupees Crores Seven Crores Seventy Eight lakhs

thirty five thousand only). The prevalent price at the relevant time to do so ascertained shall under no circumstances be less than the aforementioned base price." The agreement also provides in the same clause that, until the exercise of the aforesaid option of the respondent licensor expressed in the manner in the agreement, the agreement to sell contained, in the clause shall not come into force and that the relationship between the parties shall continue to remain as that of Licensor and Licensee. By a further letter of 27th June, 1989 addressed by the respondent to the appellant Bank, it was further agreed as follows :- "notwithstanding what is stated in the leave and licence agreements dated 23rd May, 1988 and 27th June, 1989 executed by and between us the same has been varied and/or modified in as much as it has been mutually agreed by and between the Bank and ourselves that if on the date of the expiry of the Leave and Licence agreements, any amount of the loan advanced by the Bank to us or any amount of interest thereon remains outstanding and unpaid we would not be entitled to and would not call upon the Bank to give back to us possession of the licensed premises, nor shall we initiate any ejectment proceedings against the Bank, until the amounts due and payable to the Bank as aforesaid have been repaid." This letter also places on record that, inspite of the termination of the leave and licence agreement by efflux of time or otherwise, the Bank would be entitled to continue to occupy the Licensed premises until the entire loan with interest thereon was repaid by the respondent to the appellant Bank. 5. The leave and licence agreement was to come to an end on 31st March, 1998. On 27th February, 1978, the appellant addressed a letter to the respondent and informed it that the appellant would like to continue its possession of the suit premises and called upon , the respondent to execute renewal documents. By a letter dated 3rd April, 1998, the respondent informed the appellant Bank that it did not wish to enter into any fresh leave and licence agreement with the appellant in respect of the suit premises and as such the question of executing any renewal documents did not arise. 6. On 7th April, 1998 the respondent addressed a letter to the appellant pointing out that, by its letter dated 3rd April. 1998 the appellant had already informed the respondent that it did not wish to enter into any fresh leave and licence agreement in respect of the suit premises: that despite the expiry of the said two agreements, the appellant had failed to deliver vacant possession of the suit premises under use and occupation by the Bank on or before 31st March, 1998, on which date the two leave and licence agreements expired. Finally, it was stated :- "In terms of Clause 22 of the aforesaid Leave and Licence Agreements, we do hereby put you to notice of our having exercised our opinion to call upon you to purchase the said premises from us on ownership basis at the prevailing price to be determined by M/s. K. G. Kapadia & Co., in accordance with said clause." The respondent also called upon the appellant to pay on the expiry of the period of 15 days from the date of service of notice, the total consideration or purchase price to be determined by M/s. K. G. Kapadia & Co., and informed the appellant that, as the option reserved vide clause 22 of the agreements had been exercised, the appellant's right to remain in possession of the suit premises as licensees had ceased. 7. By its letter dated April 22, 1998, the appellant contested the position put forward

by the respondent by stating that as recorded in the respondent's letter dated 27.6.1989, notwithstanding anything stated in the agreements, if any amount of the loan advanced by the appellant to the respondent or interest thereon remains outstanding and unpaid on the date of the expiry of the leave and licence agreements, then the respondent was not emptied to call upon the appellant to surrender the possession of the licenced premises until all such amounts had been repaid. It was pointed out that a sum of Rs. 2,10,21,151.03 was the balance due and payable by the respondent to the appellant; hence, it was contended that the appellant was not bound to surrender the premises occupied by it under the licence and the respondent was not entitled to exercise the option of calling upon the appellant to purchase the premises as agreed under Clause 22 of the agreement. The appellant therefore took up the stand that the notice of exercising the option was improper, misconceived and premature and declined to comply with the requisition made for payment of the purchase price. 8. By the letter dated April 24, 1998, the respondent, without prejudice to its contention that the option had been Validly exercised in terms of Clause 22 of the agreements, stated that it was nevertheless ready and willing to pay the outstanding unadjusted advance of Rs. 2,10,21,151.03 as demanded by the appellant. Though it was the opinion of the respondent that the said amount ought to be adjusted against the purchase price payable to the respondent, in order to avoid needless controversy, without prejudice to all its rights and contentions, the Respondent stated that it was "ready and willing to pay the sum of Rs. 2,10,21,151.03 paise by demand draft" against handing over quiet vacant and peaceful possession of the licensed premises and accordingly called upon the Appellant to forthwith fix a time, date arid place mutually convenient to both parties at which the Respondent could hand over the Demand Draft for Rs. 2,10,21,151.03 ps. against handing over quiet, vacant and peaceful possession of the licensed premises. The letter also says that if nothing was heard from the appellant within the next 48 hours, it would be presumed that the appellant was not willing to stand by its assurance of handing over possession of the said premises against payment of the sum of Rs. 2,10,21,151.03 ps. in which case the respondent would adopt appropriate proceedings to compel the appellant to purchase the suit premises at the price determined by the Valuers M/s. K. G. Kapadia & Co. 9. By yet another letter of 5th May, 1998 the respondent stated that as a follow up of its letter dated 24thApril, 1998 it had got ademand draft/ banker's cheque for the said amount of Rs. 2,10,21,151.03 ps. in favour of the appellant ready for the purposes of handing over the same to the appellant against the appellant handing over possession of the licensed premises to the respondent. A photo copy of the demand draft dated 5.5.98 issued by Canara Bank, Nariman Point, Mumbai 400 021 Branch was also enclosed to demonstrate its bona fides. Once again, the respondent called upon the appellant to appoint a date, time and specify the venue for handing over possession of the licensed premises to the respondent and for the respondent to hand over the aforesaid demand draft/banker's cheque in the sum of Rs. 2,10,21,151.03 within 48 hours Of the receipt Of the letter. 10. On 6th May, 1998, the respondent received a letter dated May 4, 1998 from the appellant in

which the appellant reiterated its stand that the sum of Rs. 2,10,21,152.03 was still due and payable by the respondent to it and, therefore, it was surprised to receive a conditional offer from the respondent as also exercising of the option to sell the suit properties to the appellant at a price determined unilaterally by the respondent's valuers. The appellant contended that the offer made was conditional and de hors the terms agreed upon, and that the price fixed was not only unilateral but exorbitant and unrealistic ignoring several material and vital factors which ought to be kept in mind. Finally, the appellant reiterated that till such time the issue relating to revised terms, the respondent's due compliance and/or appellant's purchase price were amicably settled or sorted out, the appellants possession was totally lawful and the demand for vacating the premises was not sustainable in law. The appellant offered to continue to pay the "rent" as hitherto. 11. In view of the dispute between the parties, the respondent filed Suit No. 2815 of 1998 on the Original Side of this Court and took out Notice of Motion No. 2018 of 1998 therein for interim reliefs. The respondent sought a declaration as to a valid, subsisting agreement for the purchase of the suit premises by the appellant from the respondent for the price or consideration of Rs. 20,79,75,000/- as determined by M/s.. K. G. Kapadia & Co. by their report; a declaration that the appellant was under an obligation to execute the necessary form required under Section 37-I prescribed under Chapter XX-C of the Income Tax Act, 1961 and to file the same with the Appropriate Authority under the said Act, a direction to the appellant to specifically perform the terms of the agreement for purchase of the suit premises on the aforesaid consideration together with interest at 21% per annum from the date of exercise of the option till the appellant executed the necessary Form 37-I under Chapter XX-C of the Income Tax Act; for consequential directions to effectuate a decree of specific performance of the agreement; a declaration that on and from 31.3.98 the appellant was in wrongful possession of the suit premises as trespasser and had incurred a liability to pay mesne profits and/or compensation at certain rate. An alternative prayer was sought that, in case specific performance was not granted, the appellant should be directed to hand over vacant and peaceful possession and be directed to pay appropriate sum for unlawful occupation of the premises. The notice of motion sought an interim order of appointment of Receiver and certain injunctions. 12. By an order made on 8th July, 1998, the learned Single Judge of this Court declined to make an ad interim order for appointment of a Receiver. However, the learned Single Judge directed by the ad interim order that pending further hearing the appellant should deposit with the respondent an amount of Rs. 15 lacs per month without prejudice to the contentions of both sides and subject to final adjustment in the proceedings. 13. Being aggrieved by the order of the learned Single Judge refusing to appoint an ad interim Receiver, the respondent carried the matter in appeal by its Appeal No. 879 of 1998. When this appeal came up for hearing before the Division Bench of this Court, the parties entered into minutes dated 12th October, 1998 and the Court made an order in terms of the said minutes. The terms of the minutes are important, and need to be reproduced in full. The terms of the minutes are :- "1. The disputes and differences between the Plaintiffs and the

Defendants set out hereinbelow are referred to the sole Arbitration of Justice Shri M. L. Pendse. 2. The disputes and differences in the suit which are at issue and which are to be decided are as follows : (a) what is the relevant date of exercise of option by the Plaintiffs for enforcing the Agreement to sell the suit premises (as more particularly set out in the Schedule hereunder written) to the Defendants? (b) The learned Arbitrator shall determine the market value of the suit premises as on the date of exercise of option (to be determined under Clause (a) supra) and for which purposes he shall be entitled to take such assistance as he deems fit and proper. 3. After answering the issues under Clause (2) supra, the learned Arbitrator shall make and publish an Award for implementation of the aforesaid issues. 4. The Defendant to pay to the Plaintiffs a sum of Rs. 15,00,000/- per month for the period from 1.4.1998 till the Award. This sum shall be paid (a) from 1.4.1998 to 31.10.1998 by one consolidated cheque on or before 30.11,1998. (b) all cheques of Rs. 15,00,000/- for the period from 1.11.1998 till the Award, shall be paid in advance on or before 7th of each month. The interim payment aforesaid shall be subject to such further directions or accounts in the Award by the learned Arbitrator. The Defendants who have credited the Plaintiffs Loan A/c in their books for the period from 1.4.1998 to 30.9-1998, shall be entitled to reverse the said credit entries against the payment of the said sum to the Plaintiffs as set out hereinabove. 5. The ad interim order dated 8.7.1998 passed in Notice of Motion No. 2018 of 1998, stands modified to the extent aforesaid. 6. Suit transferred to the Stayed List inview of reference to the Arbitration. 7. Appeal disposed off in the aforesaid terms." The schedule to the minutes described the suit premises. 14. Pursuant to the order in terms of minutes, the parties filed their pleadings before the learned Arbitrator Mr. Justice M. L. Pendse (Retired). The learned Arbitrator conducted the arbitral proceedings and made an award on 29th June, 1999. In the award, the learned Arbitrator raised the following issues and answered them as under :- "1. Whether the Claimants exercised option prescribed under clause 32 of the agreements as modified? Yes 2. If so, what is the date of exercise of option? April 24, 1998. 3. What is the market value of premises on the date of exercise of option? Rs. 16,84,50,000/-only. 4. Whether the Respondents establish that they Claimants for remaining In possession after April I. 1998? No. 5. Whether the claimants or Respondents are liable to pay costs of the proceedings and if so, what amount? Neither party is liable. 6. What award?" 15. In his long reasoned award, after giving his finding on the aforesaid issues as stated, the learned Arbitrator gave the following directions :- (a) It is declared that there is valid, binding and subsisting agreement for purchase of the premises by the Respondent Bank from the Claimants in view of the exercise of option by the Claimants on April 24, 1998. (b) The Respondent Bank shall purchase the premises, that is the area admeasuring 8164 sq. ft on the ground floor, area admeasuring 620 sq. ft. in the basement and six car parking places bearing Nos. 7, 8, 21, 32, 33 and 72 located in the compound of building known as "Maker Chambers IV" situate at Plot No. 222 of Block No. III of Backbay Reclamaination Scheme, Jamnalal Bajaj Road, Nariman Point, Mumbai 400 021 by payment of Rs. 16,8,50,000/- (Rupees Sixteen crores

Eighty Four lacs Fifty thousand only) to the Claimants. (c) The Respondent Bankjs entitled to deduct asum of Rs. 2,10,21,151.03 (Rupees Two Crores Ten lacs Twenty-one thousand one hundred Fifty one and False Three only) which was due and outstanding from the Claimants from the purchase price. In addition, the Respondent Bank is also entitled to deduct Rs. 2,50,000/- (Rupees two lacs fifty thousand only) per month out of the amount of Rs. 15,00,000/- (Rupees fifteen lacs only) paid to the claimants per month from April, 1998, till the date of the award in pursuance of the directions given by the High Court under Clause 4 of the Minutes of the order. (d) The Claimants shall execute in favour of the Respondent bank all necessary documents for effecting transfer of the premises including the transfer of the licensor's membership rights in New Maker Chamber IV premises Co-operative Housing Society Ltd. (e) All costs charges and expenses in relation to the execution and registration fees shall be borne exclusively by the Respondent Bank. (f) The Respondent Bank shall pay to the claimants compensation at the rate of Rs. 12,50,000/- (Rupees Twelve lacs Fifty thousand only) per month from the date of the award till the date of the execution of the sale deed in favour of the Respondent Bank, for occupation of the premises to be purchased. (g) The parties are directed to complete the purchase and execute the conveyance within a period of six months from the date of the award." 16. The appellant challenged the award under Section 34 of the Act vide its Arbitration Petition No. 362 of 1999. The learned Single Judge has dismissed the petition by the judgment and order dated 6th/7th November, 2000. Hence, this appeal. CONTENTIONS 17. The first contention of the Appellant is that the impugned award is in conflict with 'public policy' of India and, therefore, liable to be set aside on ground specified in Section 34(2)(e)(ii) of the Act. In amplification, learned counsel urged that under Section 28(1)(a) of the Act the Arbitrator was required to decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India as the place of arbitration was situated in India. It is contended that the learned Arbitrator failed to apply the substantive law applicable to the controversies before him and failed to decide them in accordance with the substantive laws applicable in India. Hence, it is contended that the award is in conflict with public policy and, therefore, liable to be set aside under section 34(2)(b)(ii). Strong reliance is placed on the judgment of a learned Single Judge of this Court in Hindustan Petroleum Corporation Ltd. v. Batliboi Environmental Engineers Ltd., and Anr., (Judgment of F. I. Rebello, J.). A number of instances were canvassed as to how the learned Arbitrator had not followed the law applicable in this country and/or how the findings of the learned Arbitrator were erroneous in law. We need not be detained by the instances cited, but shall address ourselves to the question of law posed for our consideration. 18. The question of law is 'Does an erroneous decision on an issue contained in an award amount to a conflict with public policy of India within the meaning of Section 34(2)(b)(ii)?' Interestingly, though strong reliance was placed by learned Counsel on the judgment of the learned Single Judge in Hindustan Petroleum Corporation Ltd., (supra), that judgment is no authority for this proposition. We notice that though the learned Judge has made a detailed survey of the law in England, America and

in this country and referred to numerous judgments, finally, in paragraph 29, the learned Judge in terms says :-"The contention that the alleged violation of substantive law, or the terms of the contract results in violation of public policy is totally untenable. The contention that the Arbitrator has awarded amounts contrary to Section 55 of the Contract Act cannot be a matter of public policy." Thus, far from being an authority for the proposition canvassed, it appears to us that this judgment denies the correctness of the proposition canvassed. 19. Mr. Thakkar was however quick to point out that in the earlier paragraphs of the judgment in Hindustan Petroleum Corporation Ltd., (supra) there are several observations which would be interpreted in his favour. We have been taken through the whole Judgment and, in view of the interesting questions of law that the judgment of the learned Single Judge in Hindustan Petroleum Corporation Ltd., (supra) throws up, we have meticulously read that judgment. We are aware that an appeal preferred against the said judgment is pending before us and is likely to come up for hearing shortly. We, therefore, do not propose to go into the several issues on which opinion has been expressed in the Judgment. At the same time, we cannot avoid expressing our dissent on certain over-widely stated propositions in the judgment which appear to be contrary to the law laid down by the Supreme Court. The first is that the 1996 Act was intended to broaden the scope of challenge to an award. In our judgment, this proposition is erroneous, both on principle and on precedent. 20. The 1996 Act, as the preamble indicates, is an act to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto. There is express reference in the perambulatory part to the fact that the United Nations Commission on international Trade Law (U.N.C.I.T.R.A.L.) had adopted the U.N.C.I.T.R.A.L. Model law on International Commercial Arbitration, 1985; that the General Assembly of the United Nations had recommended that all countries give due consideration to the said Model Law so as to bring uniformity in law of arbitral procedure; that the U.N.C.I.T.R.A.L. has adopted the U.N.C.I.T.R.A.L. Conciliation Rules in 1980 and the recommendations of the General Assembly of the United Nations for the use of the said rules and finally that the model law and the rules had made significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations; that it was expedient to make law respecting arbitration and conciliation taking into account the aforesaid Model Law and Rules. That is how the 1996 Act was conceived. 21. The statement of objects and reasons of the Arbitration and Conciliation Bill, 1995, in five terse paragraphs, indicates the raison d'etre for the Act. They are, The law on arbitration in India is at present substantially contained in three enactments, namely, the Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforce-ment) Act, 1961. It is widely felt that the 1940 Act, which contains the general law of arbitration, has become outdated. The Law Commission of India, several representative bodies of trade and industry and experts in the field of arbitration have proposed amendments

to this Act to make it more responsive to contemporary requirements. It is also recognised that our economic reforms may not become fully effective if the law dealing with settlement of both demostic and international commercial disputes remains out of tune with such reforms. Like arbitration, conciliation is also getting increasing worldwide recognition as an instrument for settlement of disputes. There is, however, no general law on the subject in India. 2. The UnitedNations Commission on International Trade Law (U.N.C.I.T.R.A.L.) adopted in 1985 the Model Law on International Commercial Arbitration. The General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law. In view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice. The U.N.C.I.T.R.A.L. also adopted in 1980 a set of Conciliation Rules. The General Assembly of the United Nations has recommended the use of these Rules in cases where the disputes arise in the context of international commercial relations and the parties seek amicable settlement of their disputes by recourse to conciliation. An important feature of the said U.N.C.I.T.R.A.L. Model Law and Rules is that they have harmonised concepts on arbitration and conciliation of different legal systems of the world and thus contain provisions which are designed for universal application. 3. Though the said U.N.C.I.T.R.A.L. Model Law and Rules are intended to deal with international commercial arbitration and conciliation, they could, with appropriate modifications, serve as a model for legislation on domestic arbitration and conciliation. The present Bill seeks to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and to define the law relating to conciliation, taking into account the said U.N.C.I.T.R.A.L. Model Law and Rules. 4. The main objectives of the Bill are as under :- (i) to comprehensively cover international commercial arbitration and conciliation as also domestic arbitration and conciliation; (ii) to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration; (iii) to provide that the Arbitral Tribunal gives reasons for its arbitral award; (iv) to ensure that the Arbitral Tribunal remains within the limits of its jurisdiction: (v) to minimise the supervisory role of Courts in the arbitral process;

(vi) to permit an Arbitral Tribunal to use mediation, conciliation, or other procedures during the arbitral proceedings to encourage settlement of disputes;

(vii) to provide that every final arbitral award is enforced in the same manner as if it were a decree of the Court :

(viii) to provide that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an Arbitral Tribunal; and

(ix) to provide that, for purposes of enforcement of foreign awards, every arbitral award made in a country to which one of the two International Conventions relating to foreign arbitral awards to which India is a party applies, will be treated as a foreign award.

5. The Bill seeks to achieve the above objects."

Of particular importance are paragraphs 4(iv) and 4(v) indicating that one of the avowed objectives of the Bill was to minimise the supervisory role of Courts in the arbitral process. Consistent with this objective, Section 5 of the Act declares that notwithstanding anything contained in any other law for the time being in force, in matters governed by Part I, no Judicial Authority shall intervene except where so provided in that Part. Chapter VII is the only Chapter in Part I which deals with the recourse against an arbitral award. Section 34 provides that recourse to a Court against an arbitral award may be made "only by an application for setting aside such award in accordance with Sub-section (2) and Sub-section (3)". Sub-section (2) states "An arbitral award may be set aside by the Court only if the grounds specified in Sub-clauses (a)(i), (ii), (iii), (iv) (v) and (b)(i) and (b)(ii) are established. 22. A cumulative reading of these provisions leaves no doubt that if the challenge does not fit within the express words of Section 34, Parliament intended to do away with such a challenge. This is in direct contrast with the situation which obtained under the law immediately prior to the 1996 Act coming into force i.e. under the Arbitration Act, 1940. The 1940 Act was replete with provisions which enabled the Court to interfere with the 'arbitral process, right from inception to delivery of the award, including matters like extension of time, appointment, removal of Arbitrators and so on. Section 30 of the 1940 Act provided that an award shall not be set aside except on one or more of the following grounds, namely, (a) that an Arbitrator or Umpire has misconducted himself or the proceedings; (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35, and (c) that an award has been improperly procured or is otherwise invalid. Despite this terse phraseology, Judicial creativity and innovation have expanded the scope of challenge to an award. There is plethora of case law on what constitutes misconduct. Perversity of Judgment, error apparent on the face of the record, and a host of other considerations were injected into this concept of legal misconduct giving a free handle for judicial intervention. Against this background, particularly in the light of strong recommendations made by the General Assembly of the United Nations on the urgent necessity of expeditious disposal of commercial disputes by recourse to arbitrations, it became imperative for Parliament to provide an alternative to the law of arbitration which had become a veritable legal trap to the unwary and had degenerated into a process. which made"lawyers laugh and legal philosophers weep, as observed by the Supreme Court in Guru. Nanak Foundation v. Rattan Singh. The costs incurred in the arbitral process on occasion matched and perhaps

even overtook that is incurred in litigations before the Courts. It was for these reasons that by one fell swoop Parliament replaced the 1940 Act by 1996 Act to achieve the objectives highlighted in the amending Bill, our emphasis being on paragraphs (iv) and (v), namely, curtailment of judicial intervention in the arbitral process. On principle therefore, we are of the view that the 1996 Act is intended to reduce to the barest minimum the legal challenge to an arbitral award. The use of the non obstante clauses under Section 5 and the embargo on judicial intervention except as provided and the repeated use of the word "only" both in Sub-sections (4) and (5) of Section 34 puts the matter beyond cavil. In our considered judgment, even considered purely on principles of statutory construction, 1996 Act is intended to curtail and reduce to the barest minimum challenges to arbitral awards. 23. Considered even on precedents, the same result would follow. In Olympus Superstructures Pvt. Ltd. v. Meena Vijay Khetan and Ors., the Supreme Court had occasion to consider the sweep of Section 34 of the 1996 Act. In paragraph 17, the Supreme Court says :- "Section 34 of the Act is based on Article 34 of the U.N.C.I.T.R.A.L. Model Law and it will be noticed that under the 1996 Act the scope of the provisions for setting aside the award is far less the same (sick) under Section 30 or Section 33 of the Arbitration Act of 1940." Then follows an analysis of the provisions of the 1996 Act and the finding that the dispute relating to specific performance can be referred to arbitration and Section 34(2)(b)(i) would not be attracted. The judgment also finds that issues between the parties on the merits of the award relating to default, time being of essence, readiness and willingness, etc., being issues of fact, are not permitted to be raised under Section 34(2) of, the Act for challenging the Award. A reference is also made to Section 34(2)(b)(ii) and pointed attention is drawn to the explanation. Having found that the subject matter of the dispute was not incapable of settlement by arbitration under the law for the time being in force and that the award was not in conflict with the public policy of India, the Supreme Court emphasised that the merits of the Award would not call for interference under Section 34(2)(b) of the Act. In our view, this judgment clearly indicates the restrictions and limits put on the Court's power of intervention in arbitral awards. 24. In Konkan Railway Corporation Ltd., and Ors. v. Mehul Construction Co., the Supreme Court was concerned with the core issue as to whether an order made by the Chief Justice or his nominee under Section 11(6) of the 1996 Act was a judicial order capable of being assailed under Article 136 of the Constitution of India or incapable of such a challenge, being a purely administrative order. In order to decide this issue the Supreme Court took a survey of the provisions of the 1996 Act and indicated the reasons why Parliament had thought it fit to bring 1996 Act on the statute book. Paragraph 4 of the judgment deals with this aspect of the matter and the observations made therein clinch the matter. Says the Supreme Court.

"4. At the outset, it must be borne in mind that prior to the 1996 Act, the Arbitration Act of 1940, which was in force in India provided for domestic arbitration and no provision was there to deal with the Foreign-Awards. So far as the For-

eign Awards are concerned, the same were being dealt with by the Arbitration (Protocol and Convention) Act, 1937. and the Foreign Awards (Recognition and Enforcement) Act, 1961. The increasing growth of global trade and the delay in disposal of cases in Courts under the normal system in several countries made it imperative to have the perception of an alternative Dispute Resolution System, more particularly in the matter of Commercial disputes. When the entire world was moving in favour of a speedy resolution of commercial disputes, the United Nations Commission on International Trade Law way back in 1985 adopted the Uncitral Model Law of International Commercial Arbitration and since then, number of countries have given recognition to that Model in their respective legislative system. With the said Uncitral Model Law in view the present Arbitration and Conciliation Act of 1996 has been enacted in India replacing the Indian Arbitration Act, 1940, which was the principal legislation on Arbitration in the country that had been enacted during the British Rule. The Arbitration Act of 1996 provides not only for domestic arbitration but spreads its sweep to International Commercial Arbitration too. The Indian law relating to the enforcement of Foreign Arbitration Awards provides for greater dutortomy in the arbitral process and limits Judicial intervention to a narrower circumference than under the previous law. To attract the confidence of International Mercantile community and the growing volume of India's trade and commercial relationship with the rest of the world after the new liberalisation policy of the Government. Indian Parliament was persuaded to enact the Arbitration and Conciliation Act of 1996 In Uncitral model and, therefore, in interpreting any provisions of the 1996 Act Courts must not ignore the objects and purpose of the enactment of 1996. A bare comparison of different provisions of the Arbitration Act of 1940 with the provisions of the Arbitration and Conciliation Act. 1996 would unequivocally indicate that 1996 Act limits intervention of Court with an arbitral process to the minimum and it is certainly not the legislative intent that each and every order passed by an authority under the Act would be a subject matter of judicial scrutiny of a Court of Law. Under the new law the grounds On which an award of an Arbitrator could be challenged before the Court have been severely cut down and such challenge is now permitted on the basis of invalidity of the agreement, want of jurisdiction on the part of the Arbitrator or want of proper notice to a party of the appointment of the Arbitrator or of arbitral proceedings. ..... All these aim at achieving the sole object to resolve the dispute as expeditiously as possible with the minimum intervention of a Court of Law so that the trade and commerce is not affected on account of litigations before a Court. ..... It would be appropriate to bear the said objective in mind while interpreting any provision of the Act. the Statement of Objects and Reasons of the Act clearly enunciates that the main objective of the legislation was to minimise the supervisory role of Courts in the arbitral process. .....

(emphasis ours)

Without mincing words, the Supreme Court in terms indicated that under the 1996 Act the grounds on which the Award of the Arbitrator could be challenged

before the Court "have been severely cut down and such challenge is now permitted on certain specified grounds only." It is interesting to read the focus by the Supreme Court on the objectives sought to be achieved by the 1996 Act. Though paragraph 4 of the Bill emphasises several objectives, in the words of the Supreme Court, "the statement of objects and reasons of the Act clearly enunciates that the main objective of the Legislature was to minimise the supervisory role of Courts in the arbitral process.'(emphasis ours) We, therefore, think that even on precedent the view taken by the learned Judge as to the extended scope for challenge to the arbitral awards under the 1996 Act is erroneous and contrary to the law laid down by the Supreme Court. 25. The learned Single Judge in Hindustan Petroleum Corporation (supra) has, after a survey of several authorities, arrived at the conclusion that the expression "in conflict with the public policy of India" is widely worded, and deliberately, so as to permit challenges which were not permissible earlier. For reasons given earlier, this view is not justified. Inspiration is derived from the judgment in Central Inland Water Transport Corporation Ltd. v. Braja Nath Ganguli that as new concepts take place of old, transactions which were once considered against public policy are now being upheld by the Courts and similarly where there has been a well-recognized head of public policy, the Courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy and the observation of the Supreme Court that, lacking precedent, the Court can always be guided by the light of the preamble to the Constitution and the principles underlying the fundamental rights and the directive principles enshrined in our Constitution. There is a quantum Jump to the conclusion that the Court while hearing a petition under Section 34 of the , 1996 Act would adopt the test of non-arbitrariness which a Writ Court would adopt under Articles 226 and 227 of the Constitution of India. The reasoning appears to be thus : "If a Judge can do it while hearing a writ petition, why should not the same Judge do it while hearing a petition under Section 34 of the Arbitration Act. With all due respect, what is lost tract is that a petition under the Arbitration Act comes up before a Single Judge of the High Court on its original side for purely fortuitous reasons. It happens in the City of Mumbai on account of the original jurisdiction exercised by the High Court under the Letters Patent. Elsewhere, such Jurisdiction is exercised by the principal Civil Court of original jurisdiction in a district. It will, therefore, be anomalous to interpret Section 34 by reference to a fact situation which is purely fortuitous. 26. Though in Hindustan Petroleum Corporation (supra)Section 5 of the 1996 Act came to be noticed, in our judgment, due importance was not given to the scope of the non obstante Clause with which the Section beings. Section 5 appears to have been brushed away with the observation that it is merely a restraint on the Court exercising jurisdiction 'if it does not have'. With respect, we disagree. The right way of reading Section 5 is that, in matters governed by Part I, no Judicial Authority shall intervene except where so provided in that part. The policy of 'no passant' is writ large in the statute and we cannot ignore it. 15th March, 2001 27. We may usefully refer to the observations of the Supreme Court in Renusagar

Power Co. Ltd. v. General Electric Co., (paragraph 65) to elucitate the concept of public policy. Though the Supreme Court was considering the meaning of the expression"public policy" within the meaning of Section 7(1)(b)(ii) of the Foreign Awards (Recognition and Enforcement) Act. 1961. the Supreme Court emphasised that since the expression "public policy" covers the field not covered by the words "and the law of India", which follow the said expression, contravention of law alone will not attract the bar of public policy and something more than contravention of law is required. Mr. Thakkar, learned Counsel for the appellant, tried to distinguish them on the ground that these observations were made while dealing with the express Section 7(1)(b)(ii) of the Foreign Awards Act. and further that there is a distinction between the enforcement of a foreign award and setting aside of a domestic award. He also contended that the Supreme Court in Renusagar Power Co. (supra) has opined that expression "public policy" must be read in a restrictive manner, when applied to the situation of enforcement of foreign awards and must be given a wide meaning when applied to a situation of setting aside of adomestic award. in our view, irrespective of whether the expression "public policy" has to be given a wider meaning or a restricted meaning, it cannot carry the meaning of contravention of law simpliciter. In our judgment, an attempt to define the exact meaning of the expression "public policy" is likely to meet with little success. It is a concept which may be experienced, but is difficult to articulate in precise words. We, may therefore; have to adopt the Upnishadic principle of "neti, neti" for defining such an elusive concept. For the present, at least we are satisfied that whatever be the width of the expression public policy, it does not include a mere contravention of law. These two judgments also take the view that the grounds open for a challenge of an award under the 1996 Act are more restricted and, unless the challenge is specifically capable of being subsumed under any ground in Section 34(2), such a challenge would not He. There is no substance in the contention that the Award is liable to be interfered with for being in conflict with the public policy of India within the meaning of Section 34(2)(b)(ii) 28. The next contention of the learned c6unsel for the appellant is that by the modification of the terms of Clause 22 of the Agreement of licence by the letter dated 27th June, 1989 if on the expiry of the leave and licence any amount of principal or interest was outstanding and unpaid, then, the respondent was not entitled to call upon the appellant to give possession and would not militate against the appellant's continued possession despite the agreement having come to an end. It is urged that it was agreed between the parties that, in such a situation, the appellant would continue to occupy the premises until the entire loan and interest was repaid. An argument is founded on this to contend that the privilege or bargain of exercising the option is a unilateral bargain or privilege which was contingent on the entire loan amount and interest beingrepaid; that since it was a unilateral bargain /privilege, it is required to be construed strictly to ensure that the conditions precedent were strictly complied with. Reference is made to United Dominions Trust (Commercial) Ltd. v. Eagle Aircraft Services Ltd.,: The Commissioner of Wealth Tax, Mysore, v. Vijayaba, Dowager Maharani Saheb, Bhavanagar and Ors.,; Hasam Nurani Malak v. Mohansingh and Anr., and

Caltex (India) Ltd., v. Bhagwan Devi Marodia, as supporting this proposition. In our view, this argument does not advance the appellant's case any further. We are sitting in appeal only against the judgment of the learned Single Judge declining to entertain the challenge to the Award under Section 34 of the 1996 Act. The learned Judge has taken the view, and rightly in our view, that this is not a challenge open to the petitioner under Section 34. The correctness or otherwise of the findings made by the Arbitrator in the Award is not liable to be challenged under Section 34. This contention also therefore, fails. 29. It was next contended that the findings of the learned Arbitrator on point Nos. (1) and (2) that the respondent had exercised the option permitted under Clause 22 of the agreement as modified on April 24, 1998, is wholly erroneous and contrary to the evidence before the Arbitrator. The learned Counsel attempted to argue that there was no material to show that there was unconditional tender of the unpaid loan amount together with interest thereupon as on 24th April, 1998 or for that matter at any point and, therefore, the Arbitrator clearly erred in taking the view that the respondent had became entitled to, or exercised, the option reserved to it under Clause 22 of the Agreements. In our Judgment, this is not an area into which the Court can enter. This was a finding purely on facts within the exclusive province of the learned Arbitrator. The learned Arbitrator was a consensual forum chosen by the parties and they must abide by his judgment, right or wrong. It is not for the Court to inquire into the correctness or otherwise of such findings. That is not available as a ground of challenge under Section 34 of the 1996 Act. 30. The same reason must negative the challenge to the award on the ground that the finding of the Arbitrator that there was valid exercise of option in law by the respondents, is erroneous, must be negatived. Reliance on Bank of Mysore Ltd., Avenue Road, Bangalore City by its Manger, B. v. Narayana Reddy v. B. D. Naidu, and Salik Ram Upadhia v. B, Jai Gopal Singh, is of no consquence. Similarly, arguments which were addressed to us about the contract being contingent, that reciprocal obligations were not fulfilled by one or the other party, are wholly misplaced and cannot afford a ground for the Court to interfere in a matter where the statute says non passant. 31. There was a faint attempt made to impugn the arbitral finding with regard to valuation. We must say that this is the weakest challenge. The contention is that the material before the Arbitrator was not scrutinised properly. In the first place, we notice that there was no material placed on record by the respondent on the issue of valuation of the suit premises. The only evidence led on the issue was by the appellant. The learned Arbitrator has appreciated the evidence oh record and taken a particular view with regard to the valuation of the suit premises. In fact, in paragraph 18 of the Award, the learned Arbitrator has noted that both the counsel had stated that the price should be determined :on the basis of the material produced in the arbitration proceedings and referred to Clause 2(b) of the Minutes of the Order passed by the High Court while making reference to arbitration. After appreciating evidence led by the appellant itself, with regard to different instances of sales in the local area, the learned Arbitrator has discussed the several methods of valuation and preferred one as against the others and arrived at the valuation

of the suit premises. Such a finding of fact would not be amenable to judicial intervention under Section 34 of the Act. 32. Mr. Thakkar then raised certain jurisdictional issues and contended that those being jurisdictional issues erroneous findings of the Arbitrator thereupon were liable to be challenged under Section 34(2)(a)(iv). The contention is that, to that extent, the award deals with issues not contemplated by, or not falling within, the scope of submission to arbitration or that it contains decisions on matters beyond the scope of submission to arbitration. 33. Before we deal with the issue, it is necessary to recount that though the Appellant suit was one for specific performance and Sought a number of prayers and declarations to which we have already referred, the reference to the arbitration came about by the minutes of the order dated 12th October, 1998. Counsel for the respondent contends, and rightly in our judgment, that an analysis of paragraph 2(a) and 2(b) would clearly indicate that whatever might have been the contesting stands taken up by the parties in Suit No. 2815 of 1998, for the purpose of arbitration at least, there was a tacit assumption that the option reserved to the respondent under Clause 27 has been exercised. That is the reason why there is ho reference made to the Arbitrator as to whether the respondent had exercised the option or whether the respondent was entitled to exercise the option. Paragraph 2(a) merely required the Arbitrator to ascertain the relevant date of exercise of option by the respondent and paragraph 2(b) required him to determine the market value of the suit premises as on the date of exercise of option for which purpose he was empowered to take such assistance as he deemed fit and proper. The third issue called upon the Arbitrator, after answering the issues under Clause (2), to make and publish an Award for implementation of the aforesaid issues. There is also fourth issue under which the appellant was required to pay a sum of Rs. 15 lacs per month for the period 1.4.1998 till the Award. We might recall here that the compensation payable under the leave and licence agreement was a sum of Rs. 12.84 lacs per month. Against this background, the parties agreed to an ad hoc amount of Rs. 15 lacs per month to be paid from 1.4.1998 (the date on which the agreement had come to an end) till the date of the Award. The reason for this interim arrangement is obvious. If the respondent was justified in its contention that it had exercised the option on a particular date, the appellant was in law bound to pay the full purchase money as on that date and continued occupation of the suit premises from that date till the conveyance was executed, and non-payment of the entire purchase money on that date, could not be without any recompense. It was for this reason that an ad hoc amount of Rs. 15 lacs was agreed upon for the period from l.4.1998 till the date of the Award. Clause 4 further clarified that "The interim payment aforesaid shall be subject to such further directions or accounts in the Award by the learned Arbitrator." This residuary power given to Arbitrator for further directions or accounts to adjust the amount paid in the interregnum has become a matter of controversy. 34. One of the points which the Arbitrator framed i.e. Point No. 4 was : "Whether the respondents (the Bank) establish that they are not liable to pay any amount to the Claimants for remaining in possession after April 1.1998?" After appreciating the material produced before him, the learned Arbitrator answered the

issue in the negative. The contention of the learned counsel for the appellant is that this issue was wholly outside the jurisdiction of the Arbitrator and could neither have been raised or answered by the Arbitrator under the terms of the submission made to him. We see no force in this contention. In our judgment, the terms of the reference in paragraphs 2 and 3 clearly empower the Arbitrator to raise this issue and answer it. 35. The next contention of the learned counsel for the appellant is that the direction made in the award vide paragraph (f) that "the appellant shall pay to the respondent compensation at the rate of Rs. 12.50 lacs per month from the date of the award till the date of the execution of the sale deed in favour of the respondent bank, for occupation of the premises to be purchased" is entirely without jurisdiction. Mr. Thakker was at pains to emphasise that recovery of compensation or licence charges by a licensor from the licensee is a matter within the exclusive province of the Small Causes Court under Section 41 of the Presidency Small Cause Courts Act. He contends that not only was such an issue not referred for arbitration, but that it was not arbitrable at all. The Judgments of the Supreme Court in Nataraj Studio v. Navrang Studio. and of this Court in Nagin Mansukhlal Dagti v. Haribhai Manibhai Patel,are pressed into service to buttress this contention. It would be worthwhile analysing these two Judgments to ascertain if they really support the contention of the learned Counsel. 36. Turning to the first of the judgments i.e. Natraj Studio (supra), we notice that the appellant and the 1st respondent therein had entered into a leave and licence agreement for use of two studios and other premises. Though the agreement of leave and licence was initially for a period of 11 months, it was extended from time to time. By an agreement made on November 5, 1972, the original agreement extended for a period of 11 months from January 1, 1973. Thus, the leave the licence agreement was in force on February 1, 1973 with effect from which Section 15A was inserted in the Bombay Rents, Hotel and Lodging House Rates Act 1947. The effect of the amendment was that a licensee who was in possession of certain premises under such unexpired licence was deemed a tenant within the meaning of the expression used in 5(11) of the Rent Act. On April 28. 1979 the first respondent purported to terminate the leave and licence agreement and called upon the appellant to hand over possession of the licensed premises. A declaratory suit was filed by the respondent in the Court of Small Causes at Bombay praying for a declaration that the appellant was a monthly tenant of the premises and entitled to the protection of the Rent Act. Pending disposal of the suit, an interim order was made fixing an interim rent. An application was made under Section 33 of the Arbitration Act, 1940 before this Court for a declaration that an arbitration clause in the leave and licence agreement' was invalid. Inoperative, etc. The application was dismissed by the High Court on the ground that the Court had no jurisdiction to determine the alleged right, if any, of the appellant as a tenant. An application was filed under Section 8 of the Arbitration Act for appointment of Arbitrators to decide the disputes and differences between the parties arising under the leave and licence agreement. The High Court allowed the application and appointed an Arbitrator. Art appeal there against was dismissed by the Division Bench on the ground that it was not mandatory under Section 39 of the

Arbitration Act, 1940. Finally, the matter landed up before the Supreme Court by way of Special Leave. The Supreme Court took the view that the question whether there was relationship of landlord and tenant between the parties, and such Other jurisdictional questions, would have to be determined by the Court where it falls for determination be it the Court of Small Causes Court or ordinary Civil Court. If the jurisdictional question is decided in favour of the Court of exclusive jurisdiction and the jurisdiction of the ordinary Civil Courts must cease to the extent its Jurisdiction is ousted. The Supreme Court was further of the view that, by reason of Section 28 of the Bombay Rent Act and by reason of the broader consideration of public policy, the Court of Small Causes has, and the Arbitrator has not, the jurisdiction to decide the question whether the respondent-landlord-licensee is entitled to seek possession of the premises. The relationship between the parties is that of licensor-landlord and licensee-tenant and the dispute between them relating to the possession of the licensed-demised premises, there was no escape from the conclusion that the Court of Small Causes alone had jurisdiction and the Arbitrator had none to adjudicate the dispute. It would be noticed that two reasons were given by the Supreme Court for this conclusion. The first was the express language used in Section 28 of the Bombay Rent Act, the second, was broader policy consideration. In paragraph 17, the Supreme Court indicated the policy consideration in the following words :-"17. The Bombay Rent Act is a welfare legislation aimed at the definite social objective of protection of tenants against harassment by landlords in various ways. It is a matter of public policy. The scheme of the Act shows that the conferment of exclusive Jurisdiction on certain Courts is pursuant to the social objective at which the legislation aims. Public policy requires that contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted. Therefore, public policy requires that parties cannot also be permitted to contract out of the legislative mandate which requires certain kind of disputes to be settled by special Courts constituted by the Act. It follows that arbitration agreements between parties whose rights are regulated by the Bombay Rent Act cannot be recognised by a Court of Law." 37. Section 41 of the Presidency Small Cause Courts Act, 1882 provides that, "Notwithstanding anything contained elsewhere in this Act" and notwithstanding that by reason of the amount of the claim or for any other reason the suit or proceeding would not, but for this provision, be within its jurisdiction, the Small Causes Court in Greater Bombay would have Jurisdiction to entertain and try, inter alia, a suit between a landlord and a tenant relating to recovery of rent or possession of any premises or between a licensor and a licensee relating to the recovery of the licence fee or charge. We notice two things. In the first place, Section 41 of the Presidency Small Cause Courts Act, 1882 has a non obstante clause which only says "Notwithstanding anything contained elsewhere in this Act" and invests the Court of Small Causes the jurisdiction to try suits and proceedings between the licensor and licensee or a landlord and tenant relating to the recovery of possession of any immovable property situated in Greater Bombay or relating to recovery of licence fee or charges therefor irrespective of the value of the subject matter of such suits or proceedings. In our judgment, the effect

of the language used in Section 41 is entirely different from the language used in Section 28 of the Rent Act. Therefore, the result, which the Supreme Court was pleased to reach in Natraj Studio on the first ground, would not follow. As to the consideration of public policy, it is clear that this is not a situation of an oppressed tenant being protected against the avarice of the rapacious landlord. Both the parties have entered into a commercial transaction with open eyes and made their bargains. 38. In any event, the real dispute between the parties, which the Arbitrator had to arbitrate upon, was not whether the respondent was entitled to licence compensation. This is obvious from the fact that the stand of both the parties before the Arbitrator was that the licence had come to an end on 31.3.1998. Both the parties, however, differed on the consequence of what should transpire after 31.3.1998 on account of the conduct of the parties. In our judgment, therefore, this was not a dispute which would fall within the province of Section 41 of the Presidency Small Cause Courts Act, 1882. This was very much a dispute within the province of the Civil Court which the parties were entitled to submit to arbitration, which they did. 39. The judgment in Nagin Mansukhlal Dagli (supra) also does not carry the matter any further, In Nagin Mansukhlal Dagli a contention was urged before the Court that Section 41 of the Presidency Small Cause Courts Act, 1882 did not take away the concurrent jurisdiction of the High Court on original side to entertain a dispute between the licensee and licensor relating to recovery of possession of immovable property, We notice that, at that point of time Section 41 contained two non obstante Clauses : (a) "notwithstanding any thing contained alsewhere in this Act" and (b) "or any other law for the time being in force." The latter non obstante clause was deleted by Maharashra Act No. 24 of 1984 vide Section 6(1). In our judgment, this brought about a sea change and makes a world of difference to the appellant's, case. Relying on the non obstante clause, and the amendment carried out to Clause 12 of the Letters Patent by this Court and the non obstante clause in Section (3) of the Bombay City Civil Court Act. 1948, this Court in Nagin Mansukhlal Dagli case came to the conclusion that a suit falling within the contemplation of Section 41 was exclusively triable by the Small Causes Court and the High Court on the original side ceased to have any jurisdiction to entertain such a suit. Such is not the case here. In our view, this Judgment does not help the appellant to advance the contention that is urged. We also cannot lose sight of the fact that the suit was one for specific performance of the agreement to buy the property and was supplanted by the arbitration agreement. 40. Counsel for the appellant urges that there are certain directions in the award which are beyond the jurisdiction of the Arbitrator as they do not arise within the submissions made to the Arbitrator. Counsel listed out the directions as under :- (a) The direction in the award in so far as it relates to adjustment of Rs. 2,10,41,151.03 is beyond the scope of the submission/reference. (b) The direction in the award in so far as it relates to adjustment of Rs. 2.5 lacs per month is similarly beyond the jurisdiction of the Arbitrator. (c) The determination of compensation at the rate of Rs. 12.5 lacs per month for the period 1.4.1998 till the date of the Award is beyond the Jurisdiction of the Arbitrator. (d) The direction made in paragraph (f) of the

Award is beyond the Jurisdiction of the Arbitrator. 41. So far as item (a) is concerned, we are somewhat surprised that this contention is pressed by the appellant in whose favour the direction is given. The net effect of this direction is that the appellant is given a facility for adjustment of Rs. 2,10,41,151.03 out of the purchase price instead of having to pay it first and then recover it from the respondent. In any event, we are of the view that Clause (3) of the submission is worded widely enough to include such an ancillary direction. Clause (3) requires the Arbitrator to make and publish an award "for implementation of the aforesaid issues. The aforesaid issues are :- 2(a) which deals with the date of exercise' of the option by the respondent and 2(b) which deals with valuation. In our view, sufficient ancillary jurisdiction has been conferred upon the Arbitrator by Clause (3) to make appropriate directions which would effectuate the award on issues 2(a) and 2(b). 42. As far as items (b) and (c) are concerned, we are of the view that it was permissible for the Arbitrator to issue such directions in view of the residuary power given to him to make"such further directions or accounts in the award" by which the interim payments made in Clause 4 would be adjusted or accounted for. We are, therefore', unable to accept the contention that these directions are beyond the scope of reference or that the award to that extent is beyond Jurisdiction. 43. Finally, Mr. Thakkar contended that the failure of the learned Arbitrator to award interest to the appellant 6n the outstanding amount of Rs. 2.10 crores and odd, is contrary to the contract between the appellant and the respondent. We think that this contention cannot arise on the basis of the award at all. The learned Arbitrator has held, in unmistakable terms, that the appellant was called upon on more than one occasion to fix the suitable time and venue for acceptance of the draft for the said amount and handing over possession of the premises to the respondent and that the appellant declined to do so. The Arbitrator held that the contingency prescribed under Clause 22 of the Agreement had arisen and that the appellant expressed its inability to deliver possession to the licensor on receipt of the letter dated April 24, 1998 from the respondent. It was for this reason that the learned Arbitrator answered issue No. (1) in favour of the respondent. Once it was held in favour of the respondent that the respondent had unconditionally offered to pay the aforesaid amount of Rs. 2.10 lacs on a particular date and that the appellant without justification declined to accept it, there was no question of directing the respondent to pay interest thereupon for a situation which arose on account of the fault of the appellant. We, therefore, see no reason to accept the contention of the counsel that not directing interest on the aforesaid amount in the award is an infirmity which would have entitled the Court to interfere with the Award. 44. The learned Counsel for the respondent pointed out that the Award in terms does not provide for payment of any interest from the date of the award till the date of payment. He drew our attention to Sub-section (7) of Section 31 and desired us to make a clarification that Sub-section (7) of Section 31 applies ifthe award is upheld and interest would be payable thereunder. According to the learned counsel, this clarification was being sought only for avoiding another round of litigation on the issue of interest which the respondent apprehends. Promptly came a very

vehement objection from the appellant through counsel that the Court cannot and ought not to make any such clarification. Perhaps, the apprehension of the respondent's counsel is justified. In any event, we see that Subsection (7) of Section 31 provides that any sum directed to paid by the Arbitrator shall, unless there is a contrary direction in the award, carry interest at the rate of eighteen per cent per anum from the date of the award to the date of payment. We think that this is a salutary provision in the statute which is intended to deter parties from raising frivolous disputes by putting them on notice that interest calculated at the rate of 18 per cent per annum on the amount directed to be paid is payable. Beyond making this observation, we do not feel called upon to make out any clarificatory exercise for we think that the salutary provision operates per proprio vigore. 45. In the result, we find there is no reason to interfere with the judgment of the learned Single Judge under appeal which has correctly raised and answered the relevant issues. 46. In the result, the appeal fails and is hereby dismissed with costs quantified at Rs. 10,000/-. 47. At this stage, an application is made for staying the execution of the award as the appellant wants to carry the matter to the Supreme Court in appeal. Mr. Devitre strongly opposes the application and contends that even though the decree may not be strictly a money decree, it does make a direction for payment of money, and the normal rule of deposit of full amount coupled with the liberty to the respondent to withdraw it on producing appropriate security, should be followed. Normally, we would have refused the request for stay, but for two reasons we are inclined to allow it. First, that an amount of Rs. 12.5 lacs per month is required to be paid as compensation till the award is fully implemented. Second, the appellant is good for the money since it is a nationalised bank. Hence, execution of the decree is stayed for a period of six weeks. 48. Certified copy expedited. 49. Parties to act on ordinary copy of this judgment duly authenticated by Court Associate.