

BALWANT SINGH (D) THR. LR.

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v.

DUNGAR SINGH (D) THR. LRS.

(Civil Appeal No. 7850 of 2009)

FEBRUARY 12, 2020

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[R. BANUMATHI AND A. S. BOPANNA, JJ.]

Arbitration Act, 1940 – s.39(1)(6) – Disputes arose between appellant and respondent (brothers) after the death of their father, regarding partition of family properties – By an agreement they appointed three arbitrators, who were their close relatives for partitioning immovable properties, shares and jewellery – Arbitrators passed award mentioning therein that the decision given unanimously by the three of them will be binding on the parties – Respondent filed application before District Judge to make the award rule of the court – Objection raised by appellant – Application dismissed by the District Judge – Respondents filed appeal u/s.39(1)(6) – Allowed by High Court – Held: Parties by mutual consent agreed to the appointment of all the three arbitrators and submitted their respective claims before them – Arbitrators are close relatives of the parties and no misconduct is alleged against them – High Court rightly set aside the order of the District Judge holding that the award has been passed after due consideration – With a view to further amicably settle the matter, the parties arrived at settlement – In view of the same, with the consent of the parties, the award is modified – Registry to draft the decree in terms of the modified award.

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Disposing of the appeal, the Court

HELD: 1.1 The parties had by mutual consent agreed to the appointment of all the three arbitrators and they had submitted their respective claims before the arbitrators. The arbitrators are the close relatives of the parties and no misconduct is alleged against the arbitrators. They have also filed the will made by their father before the arbitrators. Both the parties were present and gave their consent in writing. That apart, the parties also submitted their respective claims in the properties and the

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- A arbitrators after hearing the parties, passed the award. Having regard to the fact that the parties have consented for the arbitrators to consider their claims and pass the award, the High Court rightly set aside the order of the District Judge holding that the award has been passed after due consideration. In view of further settlement arrived at between the parties, with the consent of the parties, the award stands modified. Registry is directed to draft the decree accordingly. [Paras 6, 8 and 10][613-C-E, H; 615-B]
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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7850

- C Of 2009.

From the Judgment and Order dated 01.06.2006 of the High Court of Rajasthan at Jodhpur in S.B. Civil Miscellaneous Appeal No. 180 of 1989.

- D Prashanto Chandra Sen, Sr. Adv., P. S. Sudheer, Kaushthubh Singh, Rishi Maheshwari, Ms. Anne Mathew, Bharat Sood, Ms. Shruti Jose, Advs. for the Appellants.

Puneet Jain, Ms. Christi Jain, Harsh Jain, Harshit Khanduja, Abhinav Deshwal, Ms. Pratibha Jain, Advs. for the Respondents.

- E The Judgment of the Court was delivered by
R. BANUMATHI, J.

- F 1. This appeal has been filed by the appellant against the final order and judgment dated 01.06.2006 passed by the High Court of Rajasthan at Jodhpur in SB Civil Miscellaneous Appeal No.180 of 1989 in and by which the High Court allowed the appeal of the respondents and made the arbitral award between the parties the rule of the court.

- G 2. Balwant Singh and Dungar Singh are real brothers. After the death of their father-Jeet Mal Jain, disputes arose between them regarding partition of family properties. The parties decided to settle their dispute amicably through arbitration proceedings. Vide agreement dated 23.11.1981, they have appointed Shri Fateh Lal, Kiran Mal and Sensh Mal as arbitrators for partitioning immovable properties, shares and jewellery. These arbitrators were also close relatives of the parties. The arbitrators Shesh Mal Pagaria is brother-in-law of Dungar Singh, Shri Kiranmal Swansukha is co-brother of Balwant Singh and Fateh Lal Hingad H is a close relative of the parties. The arbitrators passed award dated

23.11.1981 mentioning therein that the decision given unanimously by the three of them will be binding on both the parties. By this award, the arbitrators had given the following decisions:- A

- “In the house situated at Babelon Ki Sehri, except for the one house which is on the left side of the pole and is known as Popat Wala House, all other houses will belong to Shri Dungar Singh Ji Babel. B
- After giving the benefit of all the houses to Dungar Singh Ji, plot admeasuring 80×40 situated in Mehtaji Ki Badi and Papat Wala House and plot located in Babelon Ki Sehri will remain with Shri Balwant Singh Ji. Whole agricultural land will remain with Shri Dungar Singh Ji and Shri Dungar Singh Ji will give Rs.9,000/- to Balwant Singh Ji. C
- According to the list of jewellery placed in bank locker, “Baju” will remain with Shri Dungar Singh Ji and “Kangania” – (two) will remain with Shri Balwant Singh Ji. The remaining gold and silver jewellery will be given to both of them in equal parts. D
- Capital that has been received from the shop by Shri Jeetmal Ji and his wife by Notice Munju dated 13.06.1973 comes to a total amount of Rs.20,381/- + Rs.4281.17 = Rs.2466.17 (Rupees Twenty Four Thousand Six Hundred Sixty Eight and Paise Seventeen Only) and from that both will get fifty – fifty share and accordingly Shri Dungar Singh Ji will give Rs.12,334/- (Twelve Thousand Three Hundred Thirty Four Only) to Balwant Singh Ji. E
- Both will get equal share of the share certificates that are in the name of Shri Jeetmal Ji Babel. F
- Utensils that are given in the list will be distributed equally between them.
- In the above decision, demands made by both of you and whatever is possessed by each of you is maintained on as is where is basis. And this decision is taken that all other demands are over. Meaning both of them has nothing to do with each other.” G

On 10.12.1982, Collector (Stamps), Udaipur registered the award. H

- A 3. On 07.04.1983, Dungar Singh filed an application before the District Judge to make the award rule of the court. Along with the application, acceptance of both the parties and award given by the arbitrators were also presented. Appellant Balwant Singh raised objection assailing the award. The court called for evidence of both the parties.
- B The application for making the award rule of the court was dismissed by the District Judge, Udaipur. The District Judge held that the panch had conducted the whole proceedings in their own way and such an award cannot be considered valid in law. The court noted that on examining the award, it was found that the award was written on 23.11.1981 and the respondent Dungar Singh had signed the award after a long time on 26.07.1982. The court also noted that on 26.07.1982 itself, one panch Sheshmal Pagaria produced the award before the arbitration judge where stamp deficiency was removed and on the very same day i.e. 26.07.1982, the same was produced before the Deputy Registrar, Udaipur for registration. It was observed that it is not clarified as to where was the original award from 23.11.1981 to 26.07.1982. The District Judge further held that though allegations of misconduct by any panch was not established but it was found that the three panchas completed the proceedings quite hurriedly and probably have not given enough time to Balwant Singh to put forth his side. The court therefore observed that making the award rule of the court does not appear to be safe and justifiable because the award by the panch is not fully clear on the basis of which the dispute between the parties could be finally settled.
- C 4. Aggrieved, the respondents filed appeal before the High Court under Section 39(1)(6) of the Arbitration Act, 1940. The High Court by impugned judgment dated 01.06.2006 opined that on going through the award, it is seen that the award was given unanimously by the arbitrators. The High Court further held that no misconduct was found on the part of the arbitrators and the award is based on the materials supplied by the parties and after due deliberation and discussion. The High Court held that the arbitrators are the close relatives of the parties and one of the arbitrators Shri Kiran Mal is the brother-in-law of Balwant Singh and as per Ex.-7, the arbitrators were appointed by mutual consent. Pointing out that mere passing of the award on the same day in one sitting does not give rise to any suspicion and would not raise any doubt or ambiguity and that no misconduct has been alleged against the arbitrators, the High Court held that the award is valid and enforceable.
- D The respondents filed a writ petition before the High Court under Article 226 of the Constitution of India challenging the validity of the award on the ground that the award was passed in contravention of Section 39(1)(6) of the Arbitration Act, 1940. The High Court rejected the writ petition and held that the award is valid and enforceable.
- E The respondents filed a writ petition before the High Court under Article 226 of the Constitution of India challenging the validity of the award on the ground that the award was passed in contravention of Section 39(1)(6) of the Arbitration Act, 1940. The High Court rejected the writ petition and held that the award is valid and enforceable.
- F The respondents filed a writ petition before the High Court under Article 226 of the Constitution of India challenging the validity of the award on the ground that the award was passed in contravention of Section 39(1)(6) of the Arbitration Act, 1940. The High Court rejected the writ petition and held that the award is valid and enforceable.
- G The respondents filed a writ petition before the High Court under Article 226 of the Constitution of India challenging the validity of the award on the ground that the award was passed in contravention of Section 39(1)(6) of the Arbitration Act, 1940. The High Court rejected the writ petition and held that the award is valid and enforceable.
- H The respondents filed a writ petition before the High Court under Article 226 of the Constitution of India challenging the validity of the award on the ground that the award was passed in contravention of Section 39(1)(6) of the Arbitration Act, 1940. The High Court rejected the writ petition and held that the award is valid and enforceable.

Court set aside the order of the learned District Judge and concluded A
that the award deserves to be made rule of the court and accordingly,
declared to be so. Being aggrieved, the appellant has preferred this appeal.

5. We have heard Mr. Prashanto Chandra Sen, learned Senior B
counsel appearing for the appellant and Mr. Puneet Jain, learned counsel
appearing for the respondents and also perused the impugned judgment
and materials on record.

6. It can be seen from the terms of reference dated 23.11.1981 C
that the parties had agreed that the arbitral award would be passed
unanimously by the arbitrators and the same would bind the parties. As
pointed out by the High Court, the parties had by mutual consent agreed
to the appointment of all the three arbitrators and they had submitted
their respective claims before the arbitrators. As pointed out earlier, the
arbitrators are the close relatives of the parties and no misconduct is
alleged against the arbitrators. They have also filed the will made by
their father Jeetmal Singh before the arbitrators. Both the parties were
present and gave their consent in writing. That apart, the parties have
also submitted their respective claims in the properties and the arbitrators
after hearing the parties, passed the award. Having regard to the fact
that the parties have consented for the arbitrators to consider their claims
and pass the award, the High Court rightly set aside the order of the D
District Judge holding that the award has been passed after due E
consideration.

7. With a view to further amicably settle the matter, the parties F
have negotiated and agreed that on Item No.8-Jewellery, in lieu of 50%
of the jewellery which the LRs of Dungar Singh are entitled i.e. 40 tolas,
LR of Balwant Singh shall pay the amount of Rs.10,00,000/- to the LRs
of Dungar Singh within a period of nine months. The parties have further
agreed that insofar as the land falling in Khasra No.15/1Ka which has
been sold by Balwant Singh which is the subject matter of litigation
against the third party, LRs of Dungar Singh shall continue the litigation G
with the third party.

8. In view of further settlement arrived at between the parties,
with the consent of the parties, the award shall stand modified as under:-

**A Description of Properties involved in the Arbitration Award
and stand of the parties**

Sl. No.	Description of Property	Assigned to as per the Award	Party in Possession	
			Who is in possession	Stand of the parties
1.	House at Babelon Ki Schri	Dungar Singh	LRs of Dungar Singh	LRs of Dungar Singh continue to remain in possession of the house.
2.	Popat Wala House, Old House	Balwant Singh	LRs of Dungar Singh	LRs of Dungar Singh are ready to hand over possession of the said house. Possession of house shall be handed over on or before 31.05.2020.
3.	Remaining House	Dungar Singh	LRs of Dungar Singh	LRs of Dungar Singh continue to remain in possession.
4.	Plot ad measuring 80*40 situated in Mehtaji ki Badi	Rs.9,000/- payable by LRs of Dungar Singh to LR of Balwant Singh	Balwant Singh	In view of the compromise, payment of amount of Rs.10,00,000/- by LR of Balwant Singh qua Item No.8 - Jewellery to be paid to LRs of Dungar Singh within a period of nine months. The amount of Rs.9,000/- is not payable by LRs of Dungar Singh to LR of Balwant Singh.
5.	Agriculture Land	Dungar Singh	The said agriculture land falls in Khasra No.15/1Ka and 13/3, Vallabh Nagar, Udaipur. Land falling in Khasra No.15/1Ka has been sold by Balwant Singh regarding which litigation is pending against third party. LRs of Dungar Singh are at liberty to continue the litigation with the third party at their cost.	Land falling in Khasra No.15/1Ka has been sold by Balwant Singh regarding which litigation is pending against third party. LRs of Dungar Singh are at liberty to continue the litigation with the third party at their cost.
6.	Money from Shop Owned by Late Shri Jeetmal and Wife (20,381+4281.17=24668.17)	To be split equally	Amount payable Rs.12,334/- by LRs of Dungar Singh to LR of Balwant Singh.	In view of the amount of Rs.10,00,000/- agreed to be paid by LR of Balwant Singh qua Item No.8 - Jewellery, this amount of Rs.12,334/- is not payable by the LRs of Dungar Singh.
7.	Share certificate in the name of Jeetmal Ji Babel	To be split equally	LRs of Dungar Singh	LRs of Dungar Singh are ready to equally divide the shares amongst themselves and LR of Balwant Singh. Shares shall be divided within a period of three months.
8.	Jewellery: i. Baju ii. Kangan*2 iii. Remaining gold and silver	Dungar Singh Dungar Singh To be distributed in equal share	LR of Balwant Singh	The said jewelleries are said to have been taken or withdrawn by Balwant Singh from Bank Locker of Bank of Rajasthan on 21.08.1991. Weight of the said jewelleries is 80 tolas (800 gms) and the LRs of Dungar Singh are entitled to 50% i.e. 40 tolas of the same. In lieu of 50% of the jewellery, LR of Balwant Singh agreed to pay an amount of Rs.10,00,000/- to LRs of Dungar Singh. Amount of Rs.10,00,000/- is payable within a period of nine months.

G 9. LRs of Balwant Singh – Deepak B Jain s/o Balwant Singh has filed an affidavit stating that the appellant shall pay an amount of Rs.10,00,000/- within a period of nine months in lieu of the share of gold of LRs of Dungar Singh in full and final settlement. Mr. Lalit Kumar Babel, LRs of Dungar Singh has also filed an affidavit that in lieu of H jewellery of 40 tolas, they are ready to receive Rs.10,00,000/-. In case,

if the amount of Rs.10,00,000/- is not paid within a period of nine months, A
the appellant is liable to pay an interest at the rate of 9% per annum on
the said amount of Rs.10,00,000/-.

10. In terms of the above modified award as stated in Para No. B
(8), the appeal shall stand disposed. Registry is directed to draft the
decree accordingly. The chart in Para No.(8) shall form part of the B
decree.

Divya Pandey

Appeal disposed of.