

Bombay High Court

Aidek Tourism Services Pvt. Ltd. ... vs Aditya Birla Nuvo Ltd on 24 August, 2016

Bench: R.D. Dhanuka

ppn

1

arbp-630.09(j).doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.630 OF 2009

1. Aidek Tourism Services Private Limited)
A Private Limited Company incorporated under)

the provisions of the Companies Act, 1956,)
having its Registered office at 12, Kalindas)
Udyog Bhavan, Century Bazar Lane, Prabhadevi,))

Mumbai - 400 025.)

2. Vishal Kedia)
ig)

3. Kamal Kedia)

Both Petitioner nos.2 and 3 are Directors of)
Petitioner no.1, residing at 32, Kedia Apartments,))

29-F Dongershi Road, Malabar Hill,)
Mumbai - 400 006.) .. Petitioners

Versus

Aditya Birla Nuvo Ltd., a public limited company)
incorporated under the of the Companies Act, 1956)
having its Registered office at Apeejay, 2nd Floor,)
Shahid Bhagat Singh Road, Fort,)

Mumbai - 400 001.) .. Respondent

— — —

Mr.V.K. Rambhadran, Senior Advocate i/by Ms.Pranjali Bhandari for the petitioners.

Mr.J.P. Sen, Senior Advocate i/by M/s.Mulla & Mulla & Craigie Blunt Caroe for the respondent.

— — —

```

::: Uploaded on - 24/08/2016          ::: Downloaded on - 25/08/2016 00:
ppn                                     2                                     arbp-630.09(j).d

```

CORAM : R.D. DHANUKA, J.

RESERVED ON : 27th July 2016

PRONOUNCED ON : 24th August 2016

Judgment :-

. By this petition filed under Section 34 of the Arbitration

and Conciliation Act, 1996 (for short "the Arbitration Act"), the petitioners have impugned the arbitral award dated 23 rd March 2009 as modified by an order dated 22 nd May 2009, the order dated 1st August 2007 and additional award dated 30th November 2013 as corrected by an order/award dated 9 th January 2014 under Section 33 of the Arbitration Act. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The petitioner no.1 was formerly known as "Ramniranjan Kedia Tourism Services Pvt. Ltd." The name of the petitioner no.1 was changed to "Aidek Tourism Services Private Limited" with effect from 1st December 2010. The petitioner nos.2 and 3 are the Directors of the petitioner no.1.

3. It was the case of the respondent in the arbitral proceedings that on 24th April 1995, the parties entered into a Hire Purchase Agreement in respect of 8 Honda Accord Cars i.e. MH-06-3401, MH-06-3402, MH-06-3403, MH-06-3404, MH-06-4063, MH-06-4064, MH-06-4065 and MH-06-4062. The total agreement value was Rs.84,27,600/- including interest which was to be paid in monthly installments of Rs.1,40,460/- for a period of 60 months from 13 th July 1995 to 13th March 2000. It was the case of the respondent that the ppn 3 arbp-630.09(j).doc parties had also entered into a separate Loan Agreement dated 13 th June 1995 for an amount of Rs.54,91,000/- advanced as a loan by the respondent to the petitioner no.1 for import of the said vehicles.

According to the respondent, the petitioner no.1 committed default in making payment under the said hire purchase agreement dated 24 th April 1995.

4. The petitioner nos.2 and 3 were parties to the said hire purchase agreement as Guarantors. It was the case of the respondent that since the petitioner no.1 was in default of its payment obligation under the said agreement, the said hire purchase agreement was terminated by the respondent. It was also the case of the respondent that in exercise of their rights under the said hire purchase agreement, the respondent repossessed 4 vehicles out of the said 8 vehicles bearing nos.MH-06-3401, MH-06-3403, MH-06-4064 in Delhi on 25 th May 2000 and MH-

06-3404 in Mumbai on 19 th June 2000 and sold the same and gave credit of sale proceeds thereof to the petitioner no.1.

5. The petitioner no.1 filed criminal complaints against the respondent with various police authorities in respect of the vehicles repossessed by the respondent and raised debit notes on the respondent on account of higher charges due and payable on the repossessed vehicles.

6. On 28th July 2000, the respondent vide its advocate's letter terminated the said agreement. In the said letter, it was stated that all hire purchase agreements in respect of 31 vehicles were dated 24th April 1994.

ppn 4 arbp-630.09(j).doc

7. On or about 19th March 2000, the respondent advertised for sale of repossessed vehicles. The petitioner no.1 vide its advocate's letter dated 27th September 2000 objected to the said

advertisement issued by the respondent. The respondent sold above referred 4 vehicles for Rs.4,50,000/-, Rs.4,25,000/-, Rs.4,25,000/- and Rs.4,25,000/- respectively.

8. On 28th June 2001, Bandra Police Station registered MECR No.5/2001 pursuant to the directions of 12th Metropolitan Magistrate Court vide order dated 15 th March 2001 under Section 156(3) of the Code of Criminal Procedure, 1973 for various offences against Birla Global Finance Limited.

9. On 29th March 2001, Birla Global Asset Finance Company Limited entered into an agreement with the Birla Global Finance Limited for acquisition of the entire business of retail finance, hire purchase and consumer durable finance including existing contracts, assets, liabilities and employees related to the retail finance division of every description of Birla Global Finance Limited as a going concern on lump sum sale basis. The name of the Birla Global Asset Finance Company Limited was changed to Birla Global Finance Limited and further changed to Aditya Birla Finance Limited.

10. It was the case of the petitioners that as per the said agreement dated 29th March 2001, the accounts and the receivables/book debts pertaining to hire purchase business of Birla Global Finance Limited vested in Birla Global Asset Finance Company Limited with effect from 30th March 2001. The arbitration proceedings were initiated ppn 5 arbp-630.09(j).doc by the Birla Global Finance Limited in July 2001 and not by Birla Global Asset Finance Company Limited.

11. By its letter dated 13th July 2001, Indian Merchants' Chamber sought consent of the petitioner no.1 to the appointment of an arbitrator. The petitioner no.1 vide its advocate's letter dated 24 th August 2001 raised its objection to the jurisdiction of the learned arbitrator to try and entertain the claim. The petitioner no.1, however, without prejudice to the said contention, consented to the appointment of an arbitrator. There were 5 separate references made by the respondent based on 5 agreements entered into between the parties against the petitioners.

12. On 13th July 2001, Indian Merchants' Chamber served upon the petitioner no.1 a copy of statement of claim filed by the respondent inter alia praying for an amount of Rs.54,91,632/- as on 5 th April 2001 under the said hire purchase agreement dated 24 th April 1995 with further interest and for handing over possession of remaining 4 vehicles.

13. The petitioner no.1 through its advocate's letter dated 24th August 2001 addressed to the Indian Merchants' Chamber objected to the jurisdiction of the learned arbitrator. On 6th October 2001, the petitioner no.1 filed written statement as well as counter claim in the said proceedings. The respondent filed its reply to the counter claim filed by the petitioner no.1. It was the case of the petitioners that during the period between 1st February 2002 and June 2002, the respondent gave inspection of the original Hire Purchase Agreement dated 24 th April ppn 6 arbp-630.09(j).doc 1994 to the petitioner no.1 and also furnished copies thereof. It was the case of the petitioner no.1 that it became aware that the agreements were void ab initio being forged and fabricated/ materially altered by the respondent.

14. The petitioner no.1 made an application before the learned arbitrator for seeking amendment to its written statement and to bring on record the alleged fraud amongst other things. By an order dated 29th March 2003, the learned arbitrator allowed the said application for amendment sought by the petitioner no.1 and granted liberty to the parties to file supplementary pleadings to the amended portion of the written statement.

15. The Indian Merchants' Chamber vide its letter dated 30 th May 2003 to the advocate of the respondent recorded that since the respondent did not file any supplementary pleadings for which a leave was sought, the Indian Merchants' Chamber would take it that there was no reply to the amended written statement from the respondent.

16. In the Minutes of meeting held on 10 th July 2008 before the learned arbitrator, by consent of the parties, it was recorded that the evidence in all five arbitral references filed by the respondent was agreed to be led together. The draft issue tendered in Arbitration Cases bearing Nos.001/2002-03, 002/2002-03, 003/2002-03, and 005/2002-03 and the draft issues tendered in the Arbitration Case No.004/2002-03 as corrected by hand were concerning to that arbitral references only. It was agreed between the parties that burden of proof in respect of Issue Nos.3, 4, 5, 6, 9, 10, 12 and 15 in the said draft issues ppn 7 arbp-630.09(j).doc tendered was initially on the petitioner's hearing and that the original claimants would be entitled to lead evidence by way of rebuttal and that in respect of remaining issues, the burden of proof was on the original claimant (respondent herein). The learned former arbitrator thereafter expressed his inability to continue with the arbitration for personal reason. By consent of parties, a former Judge of this Court was appointed as a sole arbitrator in all 5 arbitral references.

17. The respondent led oral evidence of Pawan Gupta, of Manoj R. Parvakar and of K. G. Ajmera, who were cross-examined on behalf of the petitioners. The petitioners led oral evidence of petitioner no.2 and Mr.Anil Kumar Mathur who were cross-examined on behalf of respondent therein. At the hearing of 10 th June 2003 and during the course of recording of evidence of the said Pawan Gupta, the Hire- Purchase Agreement was tendered in evidence. In view of the objection raised by the petitioner to the admission of the said document in evidence on the ground that it was inadvertently stamped, the said document was marked 'X-2' for identification. The learned arbitrator directed the Indian Merchants' Chamber to forward the said agreement along with other agreements being subject matter of other 4 arbitral references to the Superintendent of Stamps, Old Custom House, Mumbai, for adjudication of correct stamp duty. The Indian Merchants' Chambers accordingly forwarded those agreements to the Superintendent of Stamps for adjudication of correct stamp duty.

18. During the course of hearing, the respondent through their counsel informed the learned arbitrator that the requisite stamp duty payable on the said agreement was adjudicated by the Superintendent of ppn 8 arbp-630.09(j).doc Stamps office on 3rd December 2005 and pursuant to the demand notice received from Superintendent of Stamps office on 28 th December 2006 for payment of deficit stamp duty and penalty, the deficit stamp duty and penalty imposed had been paid by the respondent herein on 12 th January 2007. It was submitted by the respondent that the said agreement and other 4 agreements were inadequately stamped and tendered xerox copies

thereof as exhibits. The originals of the said agreements marked 'X-2' for identification as also the originals of the said other Hire-Purchase Agreements marked as 'X-1, X-4 and X-5' for identification were in police custody pursuant to the complaint made by the petitioners and the original of the said Hire-Purchase Agreement marked as 'X-3' for identification had been in custody of Collector, Nasik.

19. Learned arbitrator recorded that original document showing adjudication of stamp duty on the said agreement and the said other 4 agreements and payment thereof by the claimant pursuant to demand notice produced by learned counsel had been returned to him after verification. Learned arbitrator made an endorsement that learned counsel for the claimant tendered xerox copy of the agreement marked 'X-2' for identification along with the xerox copies of the other 4 agreements marked 'X-1, X-3, X-4 and X-5' for identification for being taken on record in evidence. The petitioners through their counsel raised an objection to the xerox copies being admitted in evidence.

20. Learned arbitrator appears to have heard submissions of the learned counsel for the parties as regards admissibility of those 5 documents and held that the said documents were admissible in evidence having been adequately stamped after recording the objection raised by ppn 9 arbp-630.09(j).doc the petitioners and made it part of exhibits on record of the arbitral proceedings. It appears that at the hearing held on 29 th November 2007, the petitioners through their learned counsel desired to tender copy of criminal proceedings in evidence after completion of the recording of the oral evidence which was completed on 28 th September 2004. The respondent through their counsel raised an objection on the ground that there was then no occasion to cross-examine the witness of the petitioners herein and a copy of criminal proceedings sought to be tendered in evidence shall not to be taken in evidence by the learned arbitrator.

21. The learned arbitrator, however, by consent of the parties, took copy of Loan Agreement dated 1 st February 1995 between the original claimants and the respondents forming part of compilation of documents forwarded by the learned advocate for the petitioners herein along with letter dated 7 th October 2004 to the Indian Merchants' Chamber in evidence and marked as exhibit 'R-30.'

22. By an arbitral award dated 23rd March 2009, the learned arbitrator directed the petitioners herein jointly and severally to pay to the respondent a sum of Rs.54,91,632/- together with interest on principal sum of Rs.17,67,616/- to be calculated @ 12 % p.a. from 5 th April 2001 till payment and directed the petitioner no.1 herein to hand over possession to the respondent herein of four vehicles. The learned arbitrator rejected the counter claim made by the petitioner no.1 herein and directed the petitioners to pay costs to the respondent herein quantified at Rs.2,58,317/-.

ppn 10 arbp-630.09(j).doc

23. The respondent made an application dated 28th April 2009 for correction/rectification of clerical/typographical errors in the award dated 23rd March 2009. By an order dated 23 rd March 2009 passed by the learned arbitrator, the learned arbitrator made various corrections by consent of the petitioners in the original award dated 23rd March 2009.

24. On 18th August 2009, the petitioners have impugned the award dated 23rd March 2009 as modified by an order dated 22 nd May 2009 and also the order dated 1st August 2007 allowing the amendment application made by the respondent.

25. The petitioners filed a Chamber Summons No.798 of 2012 in this arbitration petition inter alia praying for amendment of the arbitration petition on various grounds. By an order dated 3rd December 2012, this Court permitted the petitioners to amend the arbitration petition as prayed in the chamber summons.

26. By an order dated 18th April 2013 as corrected by an order dated 12th June 2013, this Court remanded the matter to the learned arbitrator and directed him to consider the averments made by the petitioners by virtue of the amendments carried out in the arbitration petition. The respondent, thereafter, filed an affidavit dated 31 st August 2013 of an ex-employee Mr.Krishna Gopal Ajmera in lieu of examination-in-chief whereas, the petitioners filed an affidavit-in-reply of its Director Mr. Vishal Kedia in lieu of examination-in-chief. Both the witnesses were cross-examined. Both the parties were allowed also to make oral submissions before the learned arbitrator. The petitioners made various applications before the learned arbitrator.

ppn 11 arbp-630.09(j).doc

27. The learned arbitrator, thereafter, made an additional award on 30th November 2013 and answered the additional issues framed by the learned arbitrator and imposed costs upon the petitioners. The said additional award was, thereafter, corrected by an order dated 9 th January 2014 under Section 33 of the Arbitration Act. The petitioners, thereafter, amended the arbitration petition and impugned the said additional award dated 30th November 2013 and also the order/award dated 9 th January 2014 under Section 33 of the Arbitration Act.

28. The petitioners, thereafter, filed ig four separate chamber summons in four separate arbitration petitions including this arbitration petition inter alia praying for an order and direction for calling enquiry report and/or documents gathered during enquiry till date with respect to the complaint dated 23rd December 2014. By an order dated 7th October 2015 passed by this Court, the said four chamber summonses came to be dismissed with costs quantified at Rs.10,000/- in each of the chamber summonses. By a separate order passed by this Court on 8 th April 2015, the companion Arbitration Petition (629 of 2009) filed by the petitioners challenging one of the arbitral awards arising out of one of the references out of those 5 references came to be dismissed. The review petition filed by the petitioners against the said order and judgment dated 8 th April 2015 is also dismissed.

29. Mr.Rambhadran, learned senior counsel for the petitioners invited my attention to various documents forming part of the compilation of the documents which were tendered, various parts of oral and documentary evidence led by the parties, observations and findings recorded by the learned arbitrator. My attention is invited to the ppn 12 arbp-630.09(j).doc alleged Hire Purchase Agreement dated 24 th April 1994 which was produced by the respondent in the arbitral proceedings and also typed copy of the alleged Hire Purchase Agreement dated 24 th April 1995

which was annexed to the statement of claim. He submits that in the statement of claim filed by the respondent, the respondent had referred to the Loan Agreement dated 13th June 1995 which was a simple finance agreement. He submits that the petitioners have not disputed the existence of the said Loan Agreement dated 13 th June 1995. It is submitted that there was no arbitration agreement recorded in the said loan agreement. He submits that according to the petitioners, transaction between the parties was a loan transaction simplicitor and not a hire purchase transaction.

30. In so far as the copy of the alleged hire purchase agreement relied upon by the respondent is concerned, it is submitted by the learned senior counsel that the petitioners have not disputed the signatures on the said hire purchase agreement. The petitioners, however, are disputing the contents of what were subsequently filled in by the respondent. The printed clauses in the said hire purchase agreement were in existence when the signatures of the petitioners were taken on the said document in advance. It is submitted that the petitioners have disputed the signatures on the Schedule annexed to the Hire-Purchase Agreement. The respondent had given inspection of the said alleged Schedule annexed to the Hire-Purchase Agreement much later.

31. The learned senior counsel submits that insofar as Schedule- I annexed to the Hire-Purchase Agreement is concerned, it is submitted that the petitioner nos.2 and 3 have not signed the said Schedule. It is ppn 13 arbp-630.09(j).doc submitted that the details written in hand in Schedule-I were subsequently filled in by the respondent and did not exist when the signature of petitioner no.1 was obtained on the said Schedule-I. He submits that Schedule appended on page 16 of the said Hire-Purchase Agreement was forged. It is submitted that though the said Hire-Purchase Agreement was typed on stamp-paper dated 25th October 1994, the date of agreement shown on the said Hire-Purchase Agreement on the first page was 24 th April 1994. The respondent had produced a typed copy of the agreement dated 24th April 1995. He submits that if the Schedule to the agreement which was a fabricated document would not have been considered by the learned arbitrator as an authenticated document, no liability of any nature whatsoever could be cast on the petitioners by the learned arbitrator.

32. The learned senior counsel invited my attention to the copy of the said Hire-Purchase Agreement allegedly dated 24th April 1994 and would submit that the said stamp-paper was purchased in the name of Birla Growth Fund Ltd. which was dated 25 th October 1994. My attention is invited to page 16 of the said alleged agreement which is a Schedule bearing the printed name of Birla Global Finance Ltd. He submits that on page 17 of the said agreement which is Schedule-I, the rubber stamp of 'Birla Growth Fund Limited' is put. He submits that in the oral evidence of the witness examined by the respondent, he deposed that putting the rubber stamp of Birla Growth Fund Ltd. on page 16 was a mistake. He submits that the said witness deposed that the date mentioned in the agreement as 24th April 1994 was also an error. He submits that the company Birla Growth Fund Ltd. became Birla Global Finance Limited only in December 1994.

ppn 14 arbp-630.09(j).doc

33. The learned senior counsel invited my attention to the loan agreement dated 13th June 1995 which was on the stamp-paper dated 9th June 1995 purchased in the name of Birla Growth Fund

Ltd. He submits that admittedly there was no signature on the Schedule alleged to have been annexed to the said loan agreement. The amount of installment mentioned in the said alleged document would not match with the loan agreement. The equated monthly installment of Rs.1,53,270/- per month mentioned in the said document does not tally with the equated monthly installment mentioned in clause 2 of the said agreement which was at the rate of Rs.1,40,460/-per month. It is submitted that all the amounts filled up in the said document were in the handwriting of the petitioners.

34. It is submitted that in the statement of claim filed by the respondent, the respondent had only produced the Hire-Purchase Agreement and deliberately did not produce the loan agreement, though had referred to the same. He submits that in the oral evidence of the witness examined by the respondent, it was admitted that there was no reference to the Schedule in the loan agreement. The said so called Schedule was neither referred in the body of the agreement nor signed by the petitioners. It is submitted by the learned senior counsel that the finance amount was Rs.54,91,000/-. The invoices in respect of the vehicles were in the name of the petitioners issued by the Honda Motors Company Limited. The amount mentioned was in Japanese. He submits that payment was released by the Punjab National Bank on issuance of letter of credit on 29th April 1995 in favour of M/s. Honda Motors Company Limited.

ppn 15 arbp-630.09(j).doc

35. The learned senior counsel placed reliance on letter dated 11th November 1997 addressed by the respondent who purportedly forwarded the Hire-Purchase Agreement bearing no. 96124 and Loan Agreement bearing no.96152. He submits that the respondent however produced the said letter without enclosures. The petitioners have not disputed acknowledgment of the said letter. The respondent however did not produce the contract bearing no.96152. He submits that even in the notice issued by the respondent to the petitioners for payment of bounced cheques, there was a reference to the loan agreement only. Even in the letter addressed to the Regional Transport Office, the respondent had referred to a loan transaction and not to the alleged hire-purchase transaction.

36. It is submitted that the petitioners have not disputed the hypothecation of those vehicles but disputed the hire-purchase transaction. The loan agreement was a self contained agreement showing the finance amount, installment amount and interest payable. The Schedule relied upon by the respondent was a fraudulent document. Even in the R.C. books in respect of those vehicles, the names of the petitioners were shown as registered owners of those vehicles. It is submitted by the learned senior counsel that though the petitioners had amended the written statement and had alleged the forgery and fabrication on the part of the respondent in various documents and though the learned arbitrator had granted liberty to the respondent to seek amendment to the statement of claim if it so desired in view of the amendment to the written statement carried out by the petitioners, the respondent did not controvert the allegation of forgery and fabrication made by the petitioners and thus ppn 16 arbp-630.09(j).doc those averments made by the petitioners were deemed to have been accepted.

37. It is submitted by the learned senior counsel that the petitioners had also appointed handwriting expert who took inspection of those documents and who was also examined as one of the witnesses before the learned arbitrator. He submits that though the respondent was granted liberty to examine handwriting expert, the respondent, vide letter dated 31st May 2004, informed the Indian Merchants' Chamber that the respondent did not wish to lead the evidence of a handwriting expert at that stage. The respondent, vide their letter dated 8 th July 2004, informed the Indian Merchants' Chamber that the respondent did not propose to file any further affidavit of evidence in lieu of examination-in-chief.

38. The learned senior counsel for the petitioners invited my attention to the affidavit in lieu of examination-in-chief filed by Mr.Pawan Gupta, one of the witnesses examined by the respondent. He submits that the said witness, in the examination-in-chief, and in particular para 2, deposed that parties had entered into Hire-Purchase Agreement dated 24th April 1995 (inadvertently referred to 24 th April 1994 on the first page of the agreement) in respect of 8 cars. It was deposed that the said agreement and the Schedule were also initialed and signed by Mr.Kamal Kedia, Director of of the petitioner no.1 company, Mr.Vishal Kedia and Mr. Kamal Kedia as guarantors to the said agreement. He also deposed that the handwritten entries in the agreement and in the schedule were made by Mr.Ajay Lamba under his instructions. Mr.Kamal Kedia and Mr.Vishal Kedia signed and initialed the agreement and Schedule after the said entries were made.

ppn

17

arbp-630.09(j).d

39. Learned senior counsel invited my attention to cross-

examination of Mr.Pawan Gupta. He submits that the said witness admitted that from 1993 or 1994, the respondent stopped filling in certain columns in the hire purchase agreements before they were signed. When the said witness was shown schedule to hire purchase agreement dated 29th August 1994, he admitted that the columns in schedule which the respondent stopped filling in, were item nos.3, 7, 8, 9, 10, 11, 13, 16, 18, 19, 20, 21 and may be also 17. He admitted that in addition to that, item nos.4, 5, 6 were also not filled in. He admitted that in clause no.38 in the main body of the agreement, two places were mentioned where the agreement was executed and where the hired articles were delivered to the hirer. These clauses were initially blank . The same were filled in later. The position was the same regarding the other documents marked 'X-2 to X-5.'

40. Learned senior counsel also invited my attention to other portion of the cross-examination of the said witness in which he admitted that he was not present when handwritten entries and blanks of the agreement were filled in by hand. The said witness admitted in his cross-examination that various blanks were kept in the said agreement. It is submitted that in the examination-in-chief, however, it is deposed by the said witness that every blanks were first filled in and then the same were signed by the petitioners. He submits that there was ex facie contradictions in the depositions

made in the examination-in-chief and the cross-examination. It is submitted that the said witness of the respondent has admitted that the signature of Mr. Vishal Kedia on page nos.1 to 15 of the agreement was different from the signature on page no.16.

ppn 18 arbp-630.09(j).doc

41. Learned senior counsel invited my attention to handwritten note annexed at page nos.88 and 89 of the compilation of the documents filed by the petitioners. He submits that the said note was marked as 'R-1' collectively which was found with the witness during the course of his cross-examination. In the said note, the witness was already given instructions by the respondent as to what the said witness had to answer in the evidence. He submits that the said witness was tutored by the respondent about the contents of the evidence which he had to give.

He submits that the said witness thus being a tutored witness, his evidence could not have been relied upon by the learned arbitrator, the witness being an unreliable witness.

42. It is submitted by the learned senior counsel that the witness examined by the respondent in the cross-examination has admitted that he was not personally aware which agreement out of Serial Nos.3 to 8 mentioned on page no.1 of Volume P-9 was a loan agreement or hire purchase agreement. The said witness has admitted in the cross-examination that upto 13th June 1995, no agreement for hire purchase of Honda cars was signed. He could not explain as to why the date appearing on hire-purchase agreement was on 24th April 1994 when he had admitted that no agreement had been signed before 13 th June 1995.

43. Learned senior counsel for the petitioners also placed reliance on the evidence of handwriting expert examined by the petitioners. Reliance is also placed on the report dated 12 th July 2004 submitted by the said handwriting expert. He submits that the petitioners had filed a police complaint. The police had filed a charge-sheet against ppn 19 arbp-630.09(j).doc the employee of the respondent alleging forgery. The said charge-sheet is stayed by this Court. Learned arbitrator refused to take relevant documents relating to the said charge-sheet on record.

44. The next submission of the learned senior counsel for the petitioners is that admittedly the alleged hire-purchase agreement which was marked as 'X-2' was in custody of police and the original thereof was never called upon by the learned arbitrator for rendering a finding that the said document was a forged document. The learned arbitrator took a photo copy of the said alleged document on record in evidence.

He submits that the learned arbitrator has applied different yardstick in taking the photo copy of the document on record in evidence and that also belatedly. He submitted that though the learned arbitrator took the photocopies of the loan agreements on record belatedly, but did not take copies of the criminal proceedings tendered by the petitioners on record on the ground of alleged delay. He submits that the respondent did not lead any evidence of any handwriting expert even by way of rebuttal. The oral argument had commenced on 29th November 2007. The arbitral award was admittedly rendered in the year 2009. By refusing to take the criminal proceedings and other

related documents tendered by the petitioners on record, gross injustice was caused to the petitioners by the learned arbitrator.

45. It is submitted by the learned senior counsel that in so far as the petitioner nos.2 and 3 are concerned, no notice invoking arbitration agreement under Section 21 was issued by the respondent. The arbitration notice was waived by the petitioner nos.2 and 3 only on 16 th June 2004. He submits that though the petitioner nos.2 and 3 were impleaded as ppn 20 arbp-630.09(j).doc guarantors, none of them were served with the papers and proceedings and the notices by the respondent herein (original claimant). He submits that since the notice invoking arbitration agreement was served only on the petitioner no.1 by the respondent and the notice of arbitration was waived by the petitioner nos.2 and 3 only on 16 th June 2004 as recorded in the arbitral proceedings, the arbitral proceedings had not commenced against the petitioner nos.2 and 3 when the notice invoking arbitration agreement was addressed and served only upon the petitioner no.1.

46. It is submitted that limitation in respect of the claims made against the petitioner nos.2 and 3 thus had not stopped when the notice invoking arbitration was served upon the petitioner no.1, but had stopped only on 16th June 2004 when the notice was waived by the petitioner nos.2 and 3. He submits that on 16th June 2004, claims made by the respondent against the petitioner nos.2 and 3 were ex facie barred by law of limitation. Learned arbitrator, however, has not considered the issue of limitation raised by the petitioner nos.2 and 3 properly and has allowed the time barred claims against the petitioner nos.2 and 3. The award shows patent illegality on this issue.

47. It is submitted by the learned senior counsel that the notices were issued by the Indian Merchants' Chamber on 13 th July 2001 only on the petitioner no.1-company. The address of the petitioner nos.2 and 3 was totally different as shown in the loan agreement. He submits that pursuant to the said notice issued by the Indian Merchants' Chamber, the letter was addressed by the advocate representing the petitioner no.1- company on 24th August 2001. Vakalatnama was also filed only by ppn 21 arbp-630.09(j).doc the petitioner no.1 before the learned arbitrator initially since no notice was served upon the petitioner nos.2 and 3 including the papers and proceedings by the Indian Merchants' Chamber. The petitioner nos.2 and 3 have also not filed any written statement initially. He submits that observation made by the learned arbitrator in the impugned award that the petitioner nos.2 and 3 did not file any written statement at all is factually incorrect. The entire award against the petitioner nos.2 and 3 on the premise that no written statement was filed by the petitioner nos.2 and 3 shows patent illegality.

48. The next submission of the learned senior counsel for the petitioners is that the learned arbitrator had framed issues after conclusion of the arguments made by the parties, which is not permissible. He submits that framing of issue after conclusion of the arguments is in violation of principles of natural justice. He submits that the learned arbitrator has rejected the plea of jurisdiction raised by the petitioners at the threshold on the ground that the petitioner no.1 had not raised such plea in the written statement and the petitioner nos.2 and 3 had not filed any written statement. He submits that objection was raised by the petitioner no.1 at the threshold by addressing a letter much before filing of the written statement. He submits that the objection in respect of the jurisdiction has to be raised and could be raised not later than filing of the written

statement.

49. It is submitted that the objection of jurisdiction raised in the correspondence admittedly before filing of the written statement was a valid objection under Section 16(2) of the Arbitration Act and could not have been rejected by the learned arbitrator on the ground that the ppn 22 arbp-630.09(j).doc same was not raised in the written statement. Reliance is placed by the learned senior counsel on the judgment of the Supreme Court in the case of Maharshi Dayanand University and Anr. Vs. Anand Coop. L/C Society Ltd. and Anr., reported in (2007) 5 SCC 295 and in particular paragraph 13 thereof. It is submitted by the learned senior counsel that though in paragraph 12 of the impugned award, the learned arbitrator recorded that the respondent herein had produced the original showing adjudication of stamp-duty and the proof of payment, the respondent had actually never produced any such document. He submits that there was no reference to the demand notice issued by the Stamp Authority, payment etc. made by the respondent in the minutes of meeting dated 29th November 2007. He submits that the reference to the alleged document in the impugned award is thus contrary to the actual position.

50. The next submission of the learned senior counsel for the petitioners is that the arbitral proceedings had commenced on the basis of alleged agreement dated 24th April 1995 as is apparent from the letter of Indian Merchants' Chamber as per clause 39 of the said alleged agreement. The petitioner no.1 had, at the threshold, had raised objection that the alleged arbitration agreement allegedly recorded in the agreement dated 24th April 1995 did not exist. The Indian Merchants' Chamber, thereafter, called upon the respondent to produce the original or photo-

stat copy of the alleged agreement for perusal of the Indian Merchants' Chamber. The respondent, however, did not send the original or photo- state copy of the alleged arbitration agreement for perusal of the Indian Merchants' Chamber. He submits that the respondent had commenced the arbitral proceedings by invoking the alleged arbitration agreement in the alleged hire purchase agreement dated 24 th April 1995 which ppn 23 arbp-630.09(j).doc never existed. The respondent had filed statement of claim based on the said alleged agreement dated 24th April 1995.

51. It is submitted that no amendment to the statement of claim was carried out by the respondent or even applied based on the alleged mistake in the date of the said agreement. He submits that the respondent never alleged any error in the said hire purchase agreement before the learned arbitrator or before the Indian Merchants' Chamber. The entire arbitral proceedings proceeded with on the footing of there being an alleged arbitration agreement dated 24th April 1995. It is submitted by the learned senior counsel that the criminal proceedings are stayed by this Court based on the false statement made by the respondent that the dispute between the parties was a civil dispute and that too without impleading the petitioners as parties to the said writ petition.

52. Learned senior counsel for the petitioners placed reliance on the judgment of the Supreme Court in the case of K.P. Poulouse Vs. State of Kerala & Anr., reported in (1975) 2 SCC 236 in support of his submission that the learned arbitrator could not have ignored the material document such as criminal proceedings in which the petitioners had alleged the forgery and fabrication of document by the respondent which were similar in the present proceedings.

53. It is submitted by the learned senior counsel that the learned arbitrator has in verbatim accepted and copied the written statement filed by the respondent in the impugned award and has allowed the entire claims of the respondent without considering the submissions of the petitioners. There was no judicial approach on the part of the learned ppn 24 arbp-630.09(j).doc arbitrator while rendering the impugned award. He tendered a chart for consideration of this Court in support of his submission that how the learned arbitrator has just accepted and copied the written arguments of the respondent in verbatim in the impugned award as a part of reasons and conclusions drawn by him. My attention is also invited to various parts of the written arguments submitted by the respondent and compared the same with various portions of the impugned award in support of this submission.

54. It is submitted by the learned senior counsel for the petitioners that though the respondent took time to appoint a handwriting expert in the arbitral meeting held on 6th February 2004, the respondent did not choose to lead any oral evidence of any handwriting expert. The examination-in-chief of the handwriting expert examined by the petitioners was not shaken in the cross-examination. The rejection of allegation of fabrication and forgery made by the petitioners in the impugned award by the learned arbitrator is ex facie contrary to the proved facts and shows patent illegality.

55. It is submitted by the learned senior counsel that the finding of the learned arbitrator that the letter dated 11 th May 1999 addressed by the petitioners to the respondent was not a 'without prejudice letter' is contrary to the provisions of the Evidence Act. He submits that the learned arbitrator ought to have considered all the correspondence addressed by the petitioners prior to the said letter dated 11 th May 1999 which were on the same subject matter which carried on endorsement 'without prejudice' and were sent without prejudice to the rights and contentions of the petitioners and thus the learned arbitrator could not ppn 25 arbp-630.09(j).doc have considered the letter dated 11 th May 1999 in isolation which had no endorsement of without prejudice. In support of this submission, learned senior counsel placed reliance on the judgment of the Supreme Court in the case of Peacock Plywood (P) Ltd. Vs. Oriental Insurance Co. Ltd., reported in (2006) 12 SCC 673 and in particular paragraph 43 thereof.

56. In support of his submission that there was no judicial approach on the part of the learned arbitrator in the impugned award and thus the award deserves to be set aside on that ground, there was a total non application of mind on the part of the learned arbitrator in the impugned award and the award shows perversity, the learned senior counsel for the petitioners placed reliance on the judgment of the Supreme Court in the case of Oil and Natural Gas Corporation Limited Vs. Werstern Geco International Limited, reported in (2014) 9 SCC 263 and in particular paragraphs 34, 35, 38, 39 and 40 thereof.

57. In so far as the additional award dated 30th November 2013 as corrected by an order/award dated 9 th January 2014 by the learned arbitrator which is also impugned by the petitioners in the present proceedings is concerned, learned senior counsel submits that the petitioners have impugned those awards also on the similar grounds raised in respect of the original award before this Court.

58. Learned senior counsel for the petitioners in fairness submits that some of the issues raised in the present petition were identical to the issues raised in the Arbitration Petition No.629 of 2009 which were dealt with by this Court in the said arbitration petition by a ppn 26 arbp-630.09(j).doc judgment and order dated 8th April 2015. The petitioners have filed an appeal against an order passed by this Court rejecting the review petition filed in the said petition and the same is pending. He submits that since the impugned award shows patent illegality and is in conflict with the public policy, the same deserves to be set aside with exemplary costs.

59. Mr.Sen, learned senior counsel for the respondent, on the other hand, submits that there were five arbitral references filed by the respondent against the petitioners. Out of five references, three references were arising out of the vehicles domestically manufactured and two references were arising out of imported vehicles. In so far as the arbitration arising out of imported vehicles is concerned, he submits that two agreements were entered into between the parties i.e. loan agreement in respect of custom duty and hire-purchase agreement in respect of purchase value of the cars. The respondent had produced hire-

purchase agreement in respect of all five matters. He submits that the loan agreement came on record in view of the petitioners calling upon the witnesses examined by the respondent to produce the same in the arbitral proceedings.

60. Learned senior counsel for the respondent invited my attention to a letter dated 25th October 1994 from the respondent to the petitioners i.e. a sanctioned letter in which, there was a reference to the hire-purchase finance which was duly acknowledged by the petitioners. He submits that even in the R.C. Book, there was an endorsement of hire purchase made by the authority in respect of the impugned ppn 27 arbp-630.09(j).doc transaction. The petitioners had suggested certain terms and had also enclosed a cheque bearing No.649658. He submits that it was a clear understanding between the parties all throughout that there was a hire-

purchase transaction.

61. Learned senior counsel invited my attention to some portions of the cross-examination of Mr.Vishal Kedia, petitioner no.2 herein who was examined as one of the witnesses by the petitioners. He submits that the witness deposed that he did not know the meaning of the word "hire-purchase." My attention is also invited to the letter of credit document/ bill of entry for home consumption. He submits that bill of entry for home consumption was issued in the name of the petitioner no.1. It was clearly provided therein that the said vehicles were under the hire-purchase agreement with Birla Growth Fund Limited. The basis of importing vehicles mentioned therein was "hire-purchase facility."

62. In so far as the submission of the petitioners that along with the letter dated 11th November 1997 addressed by the respondent, the respondent had not forwarded the documents mentioned in the said letter and more particularly in respect of hire-purchase agreement bearing no.96124 and loan agreement bearing no.96152 is concerned, my attention is invited to the letter dated 11 th May 1999 addressed by the petitioners to the respondent. He submits that in the said letter, there was a

reference to the hire-purchase agreement bearing no.96124 which is subject matter of this dispute. The petitioners had also mentioned the outstanding principal amount according to the petitioners payable to the respondent. The petitioners had also mentioned installment amount of ppn 28 arbp-630.09(j).doc Rs.1,53,270/- per month under the loan agreement dated 9th June 1995 which would match with the equated monthly installment of the loan agreement produced by the respondent. He submits that the said letter admittedly addressed by the petitioners would clearly show that the petitioners were fully aware about various agreements entered into between the parties, installments agreed, number of agreements entered into, etc.

63. Learned senior counsel invited my attention to a part of auditor's report of the petitioner no.1 including balance sheet as on 31st March 1996. He submits that in the said balance sheet, the liability of the petitioner no.1 to Birla Global Finance Limited for the assets purchased under the hire-purchase scheme was categorically mentioned. He submits that in the said balance sheet, the value of fixed assets under column "Tourist Cars" was shown which was inclusive of cars purchased by the petitioner no.1 under the hire-purchase scheme with a note that title in respect of the same did not belong to the petitioners. He submits that the said balance sheet was admittedly signed by Mr.Vishal Kedia, petitioner no.2. My attention is also invited to the schedule forming part of the balance sheet and profit and loss account of the petitioner no.1 on page 65 of Volume-IV showing the entry "Finance Charges Under Hire Purchase Scheme." The said document also shows separate interest on term loan.

64. In so far as the schedule annexed at page 16 of the hire- purchase agreement relied upon by the respondent is concerned, learned senior counsel invited my attention to the cross-examination of Mr.Vishal Kedia and more particularly question nos.26 to 62 recorded therein ppn 29 arbp-630.09(j).doc which would clearly indicate that the answers of the said witness related to the details of 8 Honda cars were tallying with the details mentioned on page 16 of hire-purchase agreement which was deliberately disputed by the petitioners. He submits that the petitioners had admittedly made some payments in respect of 8 Honda cars which were subject matter of the said hire-purchase agreement. It is submitted by the learned senior counsel that the witness examined by the petitioners confirmed the correctness of Item nos.7 to 21 of the schedule annexed at page 16 of the hire-purchase agreement in the cross-examination and the payments forwarded by the petitioners to the respondent as shown therein.

65. It is submitted by the learned senior counsel that the said witness of the petitioners admitted in his cross-examination that the petitioner no.1 had taken the loan from the respondent for paying custom duty in respect of those 8 Honda cars. The petitioners had acknowledged the receipt of the letter dated 11 th November 1997. He submits that the witness of the petitioners falsely deposed that he was not aware of the nature of the transaction and that the father of the witness was not aware of the difference between loan transaction and hire-purchase transaction. He submits that the said witness was admittedly a qualified Bachelor of Commerce and had a diploma in business finance. The witness deposed that he had not read balance sheet though he had signed the same. When copy of the Board Resolution submitted by the petitioner no.1 was shown to the witness, he deposed that the said resolution was passed in a format provided by the respondent. He submits that the evidence of the witness examined by the petitioners was full of falsehood and the witness being an unreliable

witness, his deposition was rightly rejected by the learned arbitrator.

ppn 30 arbp-630.09(j).doc

66. Learned senior counsel for the respondent invited my attention to the portion of the cross-examination of the handwriting expert examined by the petitioners and would submit that the handwriting expert did not allege that the rubber stamp put on hire-purchase agreement was fabricated.

67. Mr.Sen, the learned senior counsel appearing for the respondent placed reliance on the letter dated 11th May, 1999 addressed by the petitioners to the respondent and would submit that the said letter was not addressed by the petitioners without prejudice to their rights and contentions. He submits that in the said letter, the petitioners had disclosed the contents of the hire purchase agreement as well as the loan agreement, which were subject matter of this dispute, equated monthly installments payable by the petitioners under those two documents and the amount paid by the petitioners. He submits that in the said letter, the petitioners had requested for concession and relaxation in respect of the payment of interest etc. from the respondent. He submits that the said letter clearly indicated that the petitioner had admittedly not paid the amount since 11th May, 1999 and also indicated the admission of liability on their part.

68. It is submitted by the learned senior counsel that in the cross-examination of the witness examined by the petitioner no.1, he had clearly admitted the understanding of the petitioner no.1, about the installments payable by the petitioners under the said hire purchase agreement and the amount paid by the petitioners which understanding clearly had matched with the installments reflected in the schedule annexed to the hire purchase agreement. He submits that admittedly in ppn 31 arbp-630.09(j).doc respect of imported vehicles, the respondent had granted loan insofar as the payment of custom duty on such imported vehicle was concerned which was admittedly more than the loan amount. The parties had also entered into a separate hire purchase agreement insofar as the invoices of those vehicles were concerned. He submits that even in those documents, including the bills of entry, endorsements were made by the petitioners to the effect that those vehicles were under hire purchase agreements with the respondent.

69. It is submitted that in the said letter dated 11 th November, 1997 addressed by the respondent to the petitioners, there was also a reference to the agreement bearing no.96124 and agreement bearing no.96152. The agreement bearing no.96124 was hire purchase agreement, whereas the agreement bearing no.96152 was the loan agreement entered into between the parties. He submits that the copies in respect of those documents were also furnished to the petitioner along with the said letter.

He submits that if the petitioners would not have copies of the hire purchase agreement and the loan agreement, the petitioners could not have disclosed the contents of those two agreements, loan amount, equated monthly installments payable by the petitioners under those two agreements in the letter dated 11th May, 1999.

70. It is submitted that the accounts referred by the petitioners in the said letter dated 11th May, 1999 showing the amount of installments tallied with the amount of the installments reflected in the schedule at page 16 of the hire purchase agreement. He submits that the learned arbitrator has noted in great detail these facts, has dealt with oral as well as documentary evidence and has rightly rendered a finding of fact that ppn 32 arbp-630.09(j).doc along with the letter dated 11th November, 1997, the petitioners had received copies of all the documents mentioned in the said letter. He submits that the petitioners did not dispute that the enclosures were not received along with the said letter when the said letter was admittedly received by the petitioners. The petitioners also did not dispute the contents of the letter dated 11th November, 1997.

71. Insofar as the plea of forgery raised belatedly by the petitioners is concerned, it is submitted by the learned senior counsel for the respondent that the plea of forgery was not raised by the petitioners in the written statement originally filed before the learned arbitrator though the petitioners had copies of all the documents including those two documents before filing of the written statement before the learned arbitrator. He submits that the learned arbitrator has thus rightly disbelieved the false allegations of the petitioners about the forgery alleged to have been committed by the respondent is concerned.

72. Insofar as the issue as to whether the respondent was required to examine any hand writing expert on the issue of forgery raised by the petitioners is concerned, it is submitted by the learned senior counsel that the respondent through its witness had already deposed that both the documents were duly signed by the parties and since the said case of the respondent was proved by the witness examined by the respondent, the respondent did not examine any hand writing expert though had taken time for that purpose. He submits that the hand writing expert examined by the petitioners on the other hand had categorically admitted in his cross-examination that two signatures of the same party may not be identical. He submits that there was no allegations made by ppn 33 arbp-630.09(j).doc the petitioners that the stamp or seal of the petitioner no.1 company on the hire purchase agreement or any part thereof was fabricated which was affixed on the hire purchase agreement. He submits that the petitioners thus could not have disputed the signatures on the schedule annexed to the said hire purchase agreement.

73. Insofar as the submission of the learned senior counsel for the respondent that the learned arbitrator has in verbatim copied and / or accepted the submissions as recorded in the written arguments in the impugned award which showed non-application of mind is concerned, it is submitted by the learned senior counsel that admittedly both the parties had filed written arguments. He submits that since the learned arbitrator found the written arguments of the petitioners fanciful and not disclosing the truth, the learned arbitrator having disbelieved the case of the petitioners and having accepted the submissions of the respondent which were recorded in the written arguments filed by the respondent, the learned arbitrator was justified in reflecting the submissions made by the respondent in the impugned award. He submits that merely because the learned arbitrator has accepted the submissions as made by the respondent, that would not disclose non-application of mind on the part of the learned arbitrator or any bias on the part of the learned arbitrator. The learned arbitrator has also dealt with the written arguments of the petitioners in the impugned award. He submits that no such ground has been raised in the arbitration petition.

74. Insofar as submission of the learned senior counsel for the petitioner that the learned arbitrator could not have taken the photocopy ppn 34 arbp-630.09(j).doc of the agreement in evidence without the respondent producing the original thereof is concerned, it is submitted that the respondent had tendered the original document at the first opportunity available. The petitioner however had raised an objection of insufficiency of stamp on those documents. In view of such objection raised by the petitioner, the learned arbitrator directed the Indian Merchants' Chamber to send those documents for the adjudication to the stamp authority and decided to consider the validity of those documents subsequently. He submits that during the pendency of the arbitration proceedings, the balance amount of stamp duty was paid by the respondent. The requisite proof of balance amount of stamp duty was produced by the respondent before the learned arbitrator in presence of the petitioner. The learned arbitrator verified the original payment receipt issued by the stamp authority and in presence of the petitioner and their counsel took the photocopy of the agreements on record in evidence and marked the same as exhibit. The petitioner was fully aware that the original of those documents were in the custody of police and thus the photocopies duly stamped were rightly taken on record in evidence and were marked as exhibits. He submits that the petitioner cannot be allowed to raise objection in respect of those documents marked as exhibits at the later stage. He submits that in any event since the contents of the photocopies of the documents were proved independently by the respondent and were also admitted in the cross examination of the witness examined by the petitioner, there is no substance in this submission of the learned counsel for the petitioner.

75. Insofar as submission of the learned counsel for the petitioner that the learned arbitrator though took the photocopies of the ppn 35 arbp-630.09(j).doc documents produced by the respondent belatedly on record in evidence, the learned arbitrator did not take on record the copies of the criminal proceedings tendered by the petitioner at the same time is concerned, it is submitted by the learned senior counsel that the copies of the criminal proceedings tendered by the petitioner were totally irrelevant insofar as adjudication of the claim in the civil proceedings was concerned. He submits that the findings if any, in the criminal proceedings rendered cannot be binding on the learned arbitrator. He submits that in any event no finding in the criminal proceedings filed by the petitioner are rendered against the respondent so far. It is submitted that the learned arbitrator has thus rightly rejected the request of the petitioner to take on record the photocopies of the criminal proceedings. He submits that the petitioner has made every attempt to cause delay in the arbitration proceedings on one or the other ground.

76. Insofar as the allegations of bias made by the petitioner against the learned arbitrator is concerned, he submits that no such application was filed by the petitioner under section 12 read with section 13 alleging bias before the learned arbitrator. He submits that no such allegations thus can be allowed to be raised in this proceedings. In support of this submission, learned senior counsel placed reliance on the judgment of this court in case of Asiatic Salvors Vs.Dodsal Private Ltd., reported in AIR 1987 Bom 335.

77. Insofar as submission of the learned senior counsel for the petitioner that the letter dated 11th May, 1999 addressed by the petitioner was to be treated as a letter 'without prejudice', the same being in ppn 36 arbp-630.09(j).doc continuation of the earlier correspondence addressed by the

petitioner which were without prejudice to the rights and contentions of the petitioner is concerned, the learned senior counsel submits that the said letter dated 11th May, 1999 admittedly did not contain the endorsement 'without prejudice'. The contents of the said document were not denied by the petitioner. He submits that in the said document, the petitioner had referred to all the details of various transactions which could not have been mentioned unless the petitioner had copies of the documents in respect of each of the transactions in their possession. He submits that in the said letter, the petitioner had not only admitted the liability but the said admission of liability was coupled with the request for grant of concession. He submits that the said letter thus extended the period of limitation and was thus rightly considered by the learned arbitrator while rejecting the plea of limitation raised by the petitioner.

78. Insofar as the the submission of the learned senior counsel that the signatures of the director of the petitioner no.1 were obtained on various blank documents and thus no reliance thereon could be placed by the respondent is concerned, it is submitted by the learned senior counsel that even if those blanks were filled up subsequently would not make any difference. He submits that the respondent had authority to fill up those blanks as agents and if those are filled up by the respondent in accordance with the agreement arrived at between the parties, those blanks could not be challenged by the petitioner on that ground. He submits that the learned arbitrator has considered the various documents and also the oral evidence about the understanding between the parties about the terms of the agreement while allowing the claims made by the respondent. In ppn 37 arbp-630.09(j).doc support of this submission, learned senior counsel invited my attention to various portion of the cross examination of Mr.Vishal Kedia who was examined as a witness by the petitioner who admitted that what was filled up in various documents were according to the understanding between the parties about the terms of the agreement. Learned senior counsel for the respondent placed reliance on the judgments of Supreme Court in cases of Sardar Trilok Singh and Ors. vs. Satya Deo Tripathi, reported in (1979) 4 SCC 396 and Indian Bank vs. M/s. Satyam Fibres (India) Pvt. Ltd. reported in (1996) 5 SCC 550 in support of this submission.

79. Insofar as submission of the learned counsel for the petitioner that in respect of the issue of limitation insofar as liability against the petitioner nos. 2 and 3 are concerned, it is submitted by the learned senior counsel that there is no dispute that the petitioner nos. 2 and 3 were also impleaded as a party respondent in the statement of claim filed by the respondent before the learned arbitrator. He placed reliance on various rules framed by the Indian Merchants' Chamber and would submit that copy of the statement of claim along with documents filed by the respondent herein were required to be served upon the petitioner by the Indian Merchants' Chamber. He submits that in the written statement filed by the petitioner originally the petitioner no.1 deleted the name of the petitioner no.2 and the petitioner no.3 and originally filed the written statement only for the petitioner no.1 and thereafter urged that the petitioner no.2 and petitioner no.3 were not served with the statement of claim or any notices. He submits that the respondent did not notice this deletion of the petitioner no.2 and petitioner no.3 in the written statement filed by the petitioner no.1. He submits that in any event the petitioner ppn 38 arbp-630.09(j).doc no.2 and petitioner no.3 were representing the petitioner no.1 in the arbitration proceedings even before the said written statement was filed.

80. Learned senior counsel for the respondent invited my attention to the judgment already delivered by this court in Arbitration Petition No.629 of 2009 and more particularly paragraph 69 of the said judgment rejecting the plea of limitation raised by the petitioner. He submits that the said judgment applies to the fact of this case and is binding on the parties.

81. Mr.Rambhadran, learned senior counsel for the petitioner in rejoinder invited my attention to page 47 of the compilation of documents i.e. copy of the hire purchase agreement and would submit that the number 96124 was added by pen. He submits that the respondent had produced the said letter dated 11th November, 1997 without enclosures thereto. He submits that though the Indian Merchants' Chamber had directed the respondent to produce the original of hire purchase agreement or other writing, the respondent admittedly did not produce the original of any of the documents including the hire purchase agreement. He submits that in the statement of claim filed by the respondent, the respondent filed a false and fabricated typed copy of the hire purchase agreement allegedly the date 24th April, 1995.

82. It is submitted by the learned senior counsel that admittedly in the meeting held on 16th June, 2004 by the learned arbitrator, the respondent through its senior counsel had desired to serve the petitioner no.2 and the petitioner no.3 who were present in the said meeting when ppn 39 arbp-630.09(j).doc they waived service of notice. In the minutes of the meeting it was recorded that the service will be taken as effected that day. He submits that the petitioner nos. 2 and 3 were guarantors and their addresses were also different. He submits that the service of the statement of claim and other documents upon the petitioner nos.2 and 3 itself were served beyond the period of three years and thus barred by law of limitation.

83. Mr.Rambhadran invited my attention to some of the portion of the evidence of Mr.Pawan Gupta who was examined by the respondent as one of the witness and would submit that the said witness had admitted several mistakes in the documents and his cross examination was contrary to his deposition in his examination in chief. He submits that the learned arbitrator did not compare the admitted signatures of the director of the petitioner no.1 with the signatures of the disputed documents and disbelieved the evidence of the handwriting expert who had seen the original documents.

84. It is submitted by the learned senior counsel that the petitioner could have pointed out the fraud at any stage of the proceedings. Though the petitioner had made an attempt to tender the charge-sheet and other connected documents to demonstrate the fraud committed by the respondent, the learned arbitrator refused to take those documents on record in evidence. In support of this submission, learned senior counsel for the petitioner placed reliance on the judgment of Supreme Court in case of S.P. Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs. and others, reported in (1994) 1 SCC 1 and in particular paragraphs 1 and 5 thereof. He submits that since the fraud ppn 40 arbp-630.09(j).doc was committed by the respondent, the entire proceedings were vitiated.

Learned senior counsel for the petitioner placed reliance on the judgment of Supreme Court in case of Oil and Natural Gas Corporation Limited vs. Western Geco International Limited (supra) and in

particular paragraphs 34, 35, 38, 39 and 40 in support of his submission that since the findings rendered by the learned arbitrator are perverse and without considering the documentary and oral evidence led by the petitioner and is based on the inadmissible evidence produced by the respondent, the award deserves to be set aside. In support of his submission that the learned arbitrator could not have relied upon the 'without prejudice' letter as conclusive, he placed reliance on the judgment of Supreme Court in case of Peacock Plywood (supra).

REASONS AND CONCLUSIONS :-

85. There is no dispute that the petitioners had signed the loan agreement dated 13th June, 1995. There is also no dispute that the signatures of the petitioner no.1 was admitted on hire purchase agreement. The petitioners however, raised an issue before the learned arbitrator that the hire purchase agreement was dated 24th April, 1994, whereas the stamp on which it was written was dated 25 th October, 1994 and was forged and fabricated. It is also urged by the learned senior counsel for the petitioners that the respondent in their written statement had annexed a typed copy of the hire purchase agreement dated 24th April, 1995 and had invoked arbitration agreement recorded in the said agreement dated 24th April, 1995, whereas a copy of the hire purchase agreement produced before the learned arbitrator subsequently was dated 24th April, 1994. He submits that the petitioners have filed their written ppn 41 arbp-630.09(j).doc statement based on the said alleged hire purchase agreement dated 24 th April, 1995. It was the case of the petitioners that the entire proceedings were thus without jurisdiction and void-ab-initio.

86. A perusal of the impugned award rendered by the learned arbitrator indicates that the learned arbitrator has accepted the explanation rendered by the respondent to the said discrepancy and mistake committed by the respondent in writing the year 1994 instead of 1995. The learned arbitrator also placed reliance on the correspondence exchanged between the parties in which the petitioner no.1 herein had admitted the date of the agreement as 24th April, 1995 prior to the invocation of the arbitral reference. The petitioner no.1 did not challenge the said agreement dated 24th April, 1995 in the written statement on that ground or otherwise. The date of the agreement was not controverted or denied as the correct date by the petitioners in the written statement.

87. The learned arbitrator in the impugned award has referred to several documents forming part of the record in paragraph 21 of the impugned award, which were considered by the learned arbitrator to render a finding that the said hypothecation agreement and due execution of the said agreement dated 24th April, 1995 was duly proved by the respondent. In the finalised and signed points for determination also agreed date of the said agreement was mentioned as 24 th April, 1995. The learned arbitrator accordingly rendered a finding that the date of the hire purchase agreement was 24th April, 1995 and the due execution of the said agreement and that the said agreement had neither been void nor voidable is proved by the respondent. In my view, this finding of fact rendered by the learned arbitrator is rendered after considering the oral ppn 42 arbp-630.09(j).doc and documentary evidence led by both the parties and is not perverse and thus cannot be interfered with by this Court under section 34 of the Arbitration Act. Court has to consider the over all evidence led by the parties and not few paragraphs of the evidence or alleged inconsistency in the date of agreement inadvertently mentioned by a party. Even if there was an inadvertent error in mentioning

the date of agreement as 24 th April, 1994, there was sufficient other evidence to prove that the agreement was dated 24th April, 1995. The petitioner has not disputed the transaction between the parties.

88. In my view, the petitioners have raised this issue without any basis and contrary to their stand taken in the correspondence forming part of the record before the learned arbitrator and is accordingly rejected.

89. Insofar as the issue of jurisdiction raised by the petitioners before the learned arbitrator is concerned, the learned arbitrator has after considering documentary and oral evidence has held that he had jurisdiction to entertain the claims made by the respondent. Similarly issue was raised by the petitioner in Arbitration Petition No.629 of 2009. This Court has already rejected the issue of jurisdiction on the identical ground raised herein in the said judgment and order dated 8 th April, 1995 in Arbitration Petition No.629 of 2009 between the same parties. The said judgment is binding on the parties and this Court.

90. Insofar as the submission made by the learned senior counsel for the petitioners that equated monthly installment amount mentioned in the hire purchase agreement and the loan agreement were different is concerned, a perusal of the impugned award rendered by the learned ppn 43 arbp-630.09(j).doc arbitrator indicates that this issue has been dealt with at length in the impugned award. The learned arbitrator has considered the letter of credit, debit advice letter dated 13th June, 1995 from the respondent to the petitioner no.1 indicating initial payments required to be made by the petitioner no.1 by way of advance equated monthly installments, down payment and calling upon the petitioner no.1 to forward 57 post dated cheques for Rs.1,40,460/- each, payment advice dated 14th June, 1995 from the petitioner no.1 forwarding the cheque for consolidated amount of Rs.4,77,075/- towards three advance equated monthly installments, down payment of Rs.785/- and documentation charges of Rs.54,910/-.

91. The learned arbitrator has rendered a finding that the said payment was clearly corresponding with the figures set out in the agreement. The petitioners had also issued an undated letter to the respondent forwarding 57 post dated cheques of Rs.1,40,460/- each towards the installments payable by the petitioner no.1 under the said agreement to the respondent. The learned arbitrator has held that the petitioner no.1 had in fact paid some of the installments due under the said agreement based on the said amount to the respondent. In my view, there is thus no merits in this submission of the learned senior counsel for the petitioners. The findings rendered by the learned arbitrator are not perverse and cannot be interfered with by this Court.

92. Insofar as the submission of the learned senior counsel for the petitioners that the hire purchase agreement was fabricated and though the petitioners had examined the handwriting expert to prove such allegations and that the respondent neither controverted such allegations by amending their statement of claim nor by examining any other ppn 44 arbp-630.09(j).doc handwriting expert to controvert the allegations made by the petitioners is concerned, a perusal of the impugned award indicates that the learned arbitrator has considered the entire evidence led by both the parties and has rendered a finding of fact that the documents were not fabricated or forged as alleged by the

petitioners. In the first written statement filed by the petitioners, no such allegations were made by the petitioners. Only in the amended written statement filed subsequently, the petitioners made such allegations. The respondent had examined the witnesses to prove the existence and contents of the hire purchase agreement as well as the loan agreement.

93. The learned arbitrator in my view has rightly rendered the findings that the documents were not fabricated or forged which cannot be interfered with by this Court. The similar allegations of forgery and fabrication were made by the petitioners which were subject matter of Arbitration Petition No.629 of 2009. This Court has already upheld the findings recorded by the learned arbitrator on this issue in the identical facts in the said Arbitration Petition No.629 of 2009. In my view, the said judgment would apply to the facts of this case which was between the same parties. I am respectfully bound by the said judgment.

94. In my view, Mr.Sen, learned senior counsel for the respondent is right in his submission that since the respondent had already proved the existence and the contents of the hypothecation agreement and the loan agreement by examining two witnesses and had shattered the evidence of the witnesses examined by the petitioners including the handwriting expert, the respondent was not required to ppn 45 arbp-630.09(j).doc examine any handwriting expert to disprove the allegations of forgery and fabrication made by the petitioners. The onus was on the petitioners to prove that the documents were forged or fabricated and not on the respondent. The handwriting expert examined by the petitioners had admitted in his cross-examination that no two signatures of parties could be identical. In my view, merely because the respondent did not examine any handwriting expert to disprove the allegations of forgery or fabrication made by the petitioners, no adverse inference could be drawn against the respondent.

95. Insofar as the submission of the learned senior counsel for the petitioners that the learned arbitrator could not have taken photocopy of hypothecation agreement and the loan agreement in evidence without production of original documents on record is concerned, there is no dispute that the original documents were produced before the erstwhile learned arbitrator in the same proceedings by the respondent. In view of the objection of insufficient payment of stamp duty raised by the petitioners, the learned arbitrator had directed the Indian Merchants' Chambers to forward a copy of the said documents to the Superintendent of Stamps for adjudication and had till then marked the said documents for identification. During the pendency of the arbitration proceedings, the Superintendent of Stamps adjudicated upon those documents on 3 rd December, 2005 and made a demand for payment of balance stamp duty on 28th December, 2005.

96. Learned senior counsel for the respondent produced the original of the order passed by the Superintendent of Stamps and also proof of payment of stamp duty made by the respondent before the ppn 46 arbp-630.09(j).doc learned arbitrator. The learned arbitrator accordingly at that stage after considering the original of the order passed by the Superintendent of Stamps and the proof of payment of stamp duty made by the respondent, rightly took the photocopies of the agreement which was marked for identification on record in evidence and marked it exhibit. The petitioners did not raise any objection when the said documents were marked as exhibits by the learned arbitrator.

97. The petitioners were fully aware that the originals of those documents were in the custody of the concerned police station. The contents of those documents were already proved before the learned arbitrator. In these circumstances, the learned arbitrator was right in marking the agreement as exhibit. I do not find any infirmity with marking of those documents and taking the same on record in evidence by the learned arbitrator.

98. Insofar as the submission of the learned senior counsel that the learned arbitrator had applied different yardsticks in taking photocopies of the documents produced by the respondent on record in evidence and marking them as exhibits and refusing to take photocopies of the criminal proceedings on record in evidence is concerned, in my view, Mr.Sen, learned senior counsel for the respondent is right in his submission that when the petitioners had tendered the photocopies of the criminal proceedings on record, oral evidence of the parties was already concluded and the said criminal proceedings even otherwise were not relevant for the purpose of deciding the issues in the arbitration proceedings. There is no dispute that there was no conviction of any of ppn 47 arbp-630.09(j).doc the officers of the respondent in the said criminal proceedings. Be that as it may, the said issue was also raised by the petitioners in Arbitration Petition No.629 of 2009 challenging the similar finding of the learned arbitrator. This Court has already rejected the similar submission made by the petitioners in paragraphs 60 to 62 of the said judgment. The said judgment is binding on this Court. In my view, there is thus no substance in this submission made by the learned senior counsel that the learned arbitrator applied different yardsticks to the petitioners and the respondent and both the parties were not treated equally by the learned arbitrator.

99. Insofar as the allegations of bias made by the petitioners against the learned arbitrator in these proceedings are concerned, it is not in dispute that the petitioners did not raise any such allegations or did not file any application under section 13 read with section 12 of the Arbitration act before the learned arbitrator and thus cannot be allowed to raise that issue in these proceedings for the first time. Even otherwise, on perusal of the record, it is clear that the learned arbitrator had treated both the parties equally and the allegations of bias made by the petitioners against the learned arbitrator are totally baseless and without merits.

100. Insofar as the submission of the learned senior counsel for the petitioners that the learned arbitrator had framed the issues after conclusion of the arguments is concerned, under the provisions of the Arbitration & Conciliation Act, 1996, the learned arbitrator is not required to frame any issues which are required to be framed in a suit under the provisions of the Code of Civil Procedure, 1908. The learned ppn 48 arbp-630.09(j).doc arbitrator is not bound by the provisions of the Code of Civil Procedure, 1908 in view of section 19 of the Arbitration Act. Under section 23 of the Arbitration Act, the claimant is required to state the facts supporting his claims, points at issue and the relief or remedy sought, and the respondent is required to state his defence in respect of those particulars, unless the parties have otherwise agreed as to the required elements of those statements. Be that as it may this submission urged by the learned senior counsel for the petitioners is contrary to the facts on record and also the submissions made by the petitioners in paragraph 10 of the arbitration petition.

101. It is averred by the petitioners that the issues as framed in the arbitration proceedings were not available in record and therefore, the parties were required to submit the agreed issues. The petitioners' advocate had omitted to include the issue of jurisdiction. However, before the agreed issues were submitted to the learned arbitrator, the petitioner no.1 vide its advocate's letter dated 31 st July, 2008 pointed out that the issue of jurisdiction was omitted to be included though it was argued without any objection. The meeting was held by the learned arbitrator to sort out the said matter when both the parties addressed on the inclusion of the issue. In my view, this objection of the learned senior counsel for the petitioners is thus factually incorrect and inconsistent with the pleadings of the petitioners and contrary to the factual position on record.

102. Insofar as the submission of the learned senior counsel for the petitioners that though the original documents were not produced by the respondent before the learned arbitrator which were material documents, the learned arbitrator could not have allowed the claims ppn 49 arbp-630.09(j).doc made by the respondent is concerned, a perusal of the record indicates that the respondent had produced the hypothecation agreement initially in view of the fact that that the claim was based on the said hypothecation agreement and had subsequently produced a copy of the loan agreement. Both these documents were proved by the respondent before the learned arbitrator by leading oral evidence.

103. Insofar as the judgment of the Supreme Court in case of K.P.

Poulose (supra) relied upon by the learned senior counsel for the petitioners is concerned, there is no dispute about the proposition of the law laid down by the Supreme Court in the said judgment. The Supreme Court in the said judgment while dealing with section 30(1) of the Arbitration Act, 1940 has held that if the learned arbitrator on the face of the award arrives at an inconsistent conclusion even of his own finding or arrives at a decision by ignoring very material documents which throw abundant light on the controversy to help a just and fair decision, it would amount to legal misconduct. In my view, the said judgment of the Supreme Court would not assist the case of the petitioners and is clearly distinguishable in the facts of this case.

104. Insofar as the submission of the learned senior counsel for the petitioners that the note was found with one of the witness examined by the respondent during the course of his cross-examination, which note allegedly contained the instructions given by the respondent as to what the said witness had to answer in evidence and thus his evidence could not have been relied upon by the learned arbitrator, the witness being unreliable witness is concerned, I have perused the said note which was ppn 50 arbp-630.09(j).doc found with the said witness. The petitioners could not prove that the said note found with the witness was containing any instructions given by the respondent suggesting any answers to be given by the witness during the course of cross-examination. The petitioners have not raised any such ground in the arbitration petition and cannot be allowed to agitate this issue across the bar.

105. Be that as it may, the learned arbitrator has rendered various findings in favour of the respondent based on over all evidence led by both the parties. In these circumstances, I am not inclined to accept the submission of the learned senior counsel for the petitioners that the award

deserves to be set aside on this ground or that the evidence of the said witness who was thoroughly cross-examined by the learned senior counsel appearing for the petitioners was required to be discarded or that the said witness was unreliable witness. The petitioners have also placed reliance on some part of the cross-examination of the same witness in support of their case.

106. Insofar as the submission of the learned senior counsel for the petitioners that the letter dated 11 th May, 1999 addressed by the petitioners to the respondent was also to be construed as a letter without prejudice to the rights and contentions of the petitioners and thus no reliance thereon could be placed by the learned arbitrator or by the respondent on the ground that the said letter was in continuation of the earlier letters addressed by the petitioners which were admittedly carrying endorsements 'without prejudice' is concerned, this issue was also raised by the petitioners in the proceedings which were subject matter of ppn 51 arbp-630.09(j).doc Arbitration Petition No.629 of 2009. The learned arbitrator in the said matter has rejected such plea after considering the entire evidence and have rendered a finding of fact that the said letter dated 11 th May, 1999 was not addressed without prejudice to the rights and contentions of the petitioners. This Court has upheld the said finding recorded by the learned arbitrator in the judgment and order delivered in the said Arbitration Petition No.629 of 2009. The said judgment is binding on this Court. Be that as it may, it was not the case of the petitioners that the said letter was not addressed by the petitioners to the respondent or that the contents thereof were false or incorrect.

107. I am not inclined to accept the submission of the learned senior counsel for the petitioners that the respondent had not furnished the copies of the agreements to the petitioners at any point of time. A perusal of the said letter dated 11th May, 1999 addressed by the petitioners to the respondent clearly indicates that in the said letter, the petitioners have referred to the loan amount, the amounts of equated monthly installments and various details which were tallying with the details provided in those agreements. If the petitioners would not have possessed a copy of the agreement with the petitioners, the petitioners would not have been in a position to refer to the exact details provided in the said agreements. The findings of fact recorded by the learned arbitrator are not perverse and thus cannot be interfered with by this Court.

108. Insofar as the judgment of the Supreme Court in case of Peacock Plywood (P) Ltd. (supra) relied upon by the learned senior counsel for the petitioners on this issue is concerned, in the said judgment the Supreme Court has laid down a criteria as to when the document ppn 52 arbp-630.09(j).doc containing an endorsement "without prejudice" can be relied upon before a Court of law and when cannot be relied upon. It is not the case of the petitioners that the petitioners had not requested for various concessions and rebate insofar as repayment of various amounts to the respondent by the petitioners was concerned. The judgment of the Supreme Court in case of Peacock Plywood (P) Ltd. (supra) thus would not assist the case of the petitioners but will assist the case of the respondent.

109. Insofar as the reiteration of the submission which was made in Arbitration Petition No.629 of 2009 such as challenging the locus of the respondent herein, the authority of Shri Pavan Gupta and Shri Parvatikar to represent the respondent, abatement of arbitral proceedings and some of the issues which are dealt with in the aforesaid paragraphs are concerned, these submissions are already

rejected by this Court in Arbitration Petition No.629 of 2009. For the reasons recorded by this Court in the said judgment, these submissions have no merits and are accordingly rejected.

110. Insofar as the issue of limitation and more particularly in respect of the claims made by the respondent against the petitioner nos.2 and 3 herein is concerned, the issue of limitation against the petitioner nos.2 and 3 was also raised by the petitioner in the arbitral proceedings which was subject matter of Arbitration Petition No.629 of 2009. This Court has already considered the said issue in detail in the said judgment and has rejected the said plea.

111. Be that as it may, it is not disputed that the petitioner nos.2 and 3 were impleaded as party respondents in the statement of claim filed ppn 53 arbp-630.09(j).doc by the respondent herein along with the petitioner no.1. The said statement of claim was filed by the respondent before the Indian Merchants' Chambers according to the rules framed by the said Indian Merchants' Chambers which were applicable to the arbitration proceedings between the parties. Though in the written statement originally filed in the proceedings, the names of all three petitioners herein were mentioned, the names of the petitioner nos.2 and 3 were subsequently deleted by the petitioner no.1. The petitioner no.1 was represented by the petitioner nos.2 and 3 in the arbitration proceedings even before filing the written statement by the petitioners.

112. The service of the copy of the statement of claim upon the petitioner nos.2 and 3 subsequently by the Indian Merchants' Chambers would not stop limitation insofar as the petitioner nos.2 and 3 are concerned. In my view, limitation had already stopped when the statement of claim against all three petitioners was filed by the respondent herein with the Indian Merchants' Chamber. There is thus no substance in the submission of the learned senior counsel for the petitioners in this arbitration petition that the notices were waived by petitioner nos.2 and 3 only on 16th June, 2004 during the pendency of the arbitration proceedings or that the claim made against the petitioner nos.2 and 3 was already barred by law of limitation on the day on which the petitioner nos.2 and 3 waived arbitration notice on 16th June, 2004. Waiver of notice subsequently by the petitioner nos.2 and 3 would not stop the limitation again which was already stopped when the statement of claim was filed.

ppn 54 arbp-630.09(j).doc

113. A perusal of the impugned award rendered by the learned arbitrator clearly indicates that the issue of limitation has been discussed in detail in the impugned award and after considering the evidence and pleadings and the provisions of law, in my view, the learned arbitrator has rightly rejected the plea of limitation raised by the petitioners. No interference with the rejection of plea of limitation raised by the petitioners by the learned arbitrator is warranted.

114. Insofar as the submission of the learned senior counsel for the petitioners that the signatures of the petitioners were taken on hire purchase agreement and the loan agreement and the blanks were subsequently filled up by the respondent and thus no reliance thereon could be placed by the learned arbitrator or the respondent thereon and reliance placed on the evidence of Shri Pavan Gupta in support of this submission is concerned, the learned arbitrator has dealt with this issue at

great length in paragraph 17 of the impugned award. The learned arbitrator has rendered a finding of fact that there is no material on record to accept that the evidence of the petitioner no.2 which was motivated by self interest that the signatures of the petitioners were obtained on the agreements in blank.

115. It is held by the learned arbitrator that there was no merit in the contention that the said agreements were signed in blank by the petitioners. It is held that even otherwise, if it could be said that the said agreements would be signed by the petitioners in blank, it would make no difference to the rights and liabilities by the parties thereto as it is settled law that mere obtaining of an agreement in blank does not amount to ppn 55 arbp-630.09(j).doc fraud which would vitiate an agreement. It is held that the hurdle lies upon the person claiming that the agreement was signed in blank to prove that it had been filled in a manner not in consonance with the understanding between the parties and therefore void.

116. It is held by the learned arbitrator that it was clear from contemporaneous documentation and the conduct of the parties of the said agreement that the contents of the said agreement had been perfectly in consonance with the understanding between the parties which was acted upon. It is held that in law, a person signing an agreement in blank and handing over the same to counter party constitutes such counter party as his agent to fill in the document. The learned arbitrator considered large number of documents in evidence while rejecting this plea of the petitioner.

117. Insofar as the submission of the learned senior counsel for the petitioners that in the impugned award the learned arbitrator has adopted most of the submissions made by the respondent in its written arguments as if part of reasons in the impugned award in verbatim is concerned, no such ground is raised in the arbitration petition. Be that as it may, it is not in dispute that both the parties were allowed to file the written arguments in addition to the oral submissions advanced before the learned arbitrator. The learned arbitrator having found no substance in the submissions made by the petitioners and having found substance in the submissions made by the respondent, has incorporated those written submissions which were already advanced orally before the learned arbitrator.

ppn 56 arbp-630.09(j).doc

118. In my view merely because the learned arbitrator, who has dealt with each and every submissions made by both the parties and has rendered detailed reasoned award and while rendering such award, has accepted the submissions recorded in the said written arguments in the impugned award more or less on the same terms would not make the award vitiated on that ground. The learned arbitrator has also dealt with the submissions made by the petitioners in the impugned award. There cannot be any dispute that the learned arbitrator has to decide in accordance with the submissions made by both the parties. Even if any part of the reasonings in the award tallies with the written submissions made by one of the parties whose submissions are accepted by the learned arbitrator would be of no consequence and no mala-fide, bias or non-

application of mind can be attributed against the learned arbitrator, if the conclusion drawn by the learned arbitrator is correct. In my view, this submission made by the learned senior counsel for the petitioners was not in good taste and is rejected.

119. Mr.Sen, learned senior counsel appearing for the respondent placed reliance on paragraph 5 of the judgment of the Supreme Court in case of Sardar Trilok Singh & Ors. vs. Satya Deo Tripathi (supra). The Supreme Court has held in the said judgment that obtaining signature of a person on blank sheet of papers by itself is not an offence of forgery or the like. It becomes the offence when the paper is fabricated into a document of the kind which attracts relevant provisions of Penal Code making it an offence or when such a document is used as a genuine document. Learned senior counsel for the respondent also placed reliance on the judgment of the Supreme Court in case of Indian Bank vs. ppn 57 arbp-630.09(j).doc Satyam Fabrics (India) Private Limited (supra) taking a similar view what was taken in case of Sardar Trilok Singh & Ors. (supra).

120. A perusal of the oral evidence led by the petitioner no.2 before the learned arbitrator clearly indicates that the understanding of the petitioners about the contents of the agreements and which were partly acted upon by the petitioners and as reflected in the letter dated 11 th May, 1999 were tallying with the contents of the agreements. Even if the petitioners had signed in blank, the petitioners never made any such grievance nor applied for cancellation of those documents by filing any appropriate proceedings before any Court of law. The evidence on record on the contrary proves that both the parties were ad-idem on the contents of the filled up blanks in those two agreement which were actual terms and conditions of the agreements arrived at between the parties as per the understanding between the parties.

121. The learned arbitrator has rendered a finding that the petitioners had not proved any deviation from the original understanding between the parties in the handwritten portion of the said agreements.

The petitioners had failed to discharge the burden which was upon them who had claimed that the agreements were signed in blank and the same were not filled in in consonance with the understanding between the parties. The judgments of the Supreme Court in case of Sardar Trilok Singh & Ors. (supra) and Indian Bank vs. Satyam Fabrics (India) Private Limited (supra) squarely apply to the facts of this case. I am respectfully bound by the said judgments. The finding recorded by the learned arbitrator on this issue being not perverse and is based on documentary and oral evidence cannot be interfered with by this Court.

ppn 58 arbp-630.09(j).doc

122. Insofar as the judgment of the Supreme Court in case of Maharshi Dayanand University & Anr. (supra) relied upon by the learned senior counsel for the respondent is concerned, in the said judgment, the Supreme Court has considered the provisions of sections 7, 11 and 16 of the Arbitration & Conciliation Act, 1996 and has held that the arbitrator in the first instance had to decide whether the agreement was established and whether the claims made by the claimant were within the purview of the tendered conditions and only on deciding those two aspects, could go into the merits

of the claim made by the claimant. In my view, this judgment of the Supreme Court is of no assistance to the petitioners in the facts and circumstances of this case at all. In this case, the learned arbitrator has after holding that the hire purchase agreement as well as the loan agreement existed and the arbitration agreement between the parties existed and then proceeded with the claims made by the respondent on merits.

123. Insofar as the judgment of the Supreme Court in case of Oil & Natural Gas Corporation Limited vs. Western Geco International Limited (supra) relied upon by the learned senior counsel for the petitioners in support of the submission that since there was no judicial approach in the matter by the learned arbitrator and since the findings recorded by the learned arbitrator are perverse, the impugned award can be set aside by this Court under section 34 of the Arbitration & Conciliation Act, 1996 is concerned, in my view, there is no dispute about the proposition of law laid down by the Supreme Court in the said judgment. The petitioners however, have not made out any case or have not satisfied or have not been able to demonstrate that any of the grounds raised by the petitioners would fall under section 34(2)(a) or 34(2)(b) of ppn 59 arbp-630.09(j).doc the Arbitration & Conciliation Act, 1996 or that there was no judicial approach in the impugned award passed by the learned arbitrator or that the findings were perverse.

124. A perusal of the oral evidence led by the petitioner no.2 clearly indicates that the understanding of the petitioners of the terms and conditions of the hire purchase agreement were tallied with the details mentioned on page 16 of the hire purchase agreement and inspite thereof, the petitioners had deliberately disputed the contents of page 16 of the hire purchase agreement. It further indicates that the petitioners had made some payments in respect of 8 Honda Cars which were subject matter of the said hire purchase agreement. The said witness confirmed the correctness of items 7 to 21 of the schedule annexed at page 16 of the hire purchase agreement. He also admitted in the cross-examination that the petitioner no.1 had taken a loan from the respondent for paying custom duty in respect of those 8 Honda Cars and had acknowledged the receipt of the letter dated 11th November, 1997.

125. Though the said witness was a qualified Bachelor of Commerce and had a diploma in Business Finance, he deposed in the cross-examination that he had not read the balance sheet though he had signed the same. When a copy of the particular resolution submitted by the petitioner no.1 was shown to the witness, he deposed that the said resolution was based on a format provided by the respondent and further deposed that he was not aware of the nature of transaction. He deposed that the father of the witness was also not aware of the bank loan transaction and schedule to hire purchase transaction. Learned senior counsel for the petitioners during the course of argument did not dispute ppn 60 arbp-630.09(j).doc about the transaction between the parties and that various amounts were received by the petitioners and various payments were made by the petitioners to the respondent in accordance with the agreements. In my view, this submission of the learned senior counsel that the transaction was not a hire purchase transaction but was a loan transaction simplicitor is contrary to the several undisputed financial documents of the petitioner no.1 produced on record showing the transaction of hire purchase between the parties and payment of hire purchase charges by the petitioners to the respondent and the admission of liability. In my view, the learned arbitrator rightly did not consider the petitioner no.2 as reliable witness in the impugned

award.

126. In my view, the impugned award rendered by the learned arbitrator is rendered after considering the documentary as well as oral evidence and pleadings filed by both the parties. Since such findings of fact are not perverse, the same cannot be interfered with by this Court in this petition filed under section 34 of the Arbitration & Conciliation Act, 1996. The petition is devoid of merits.

127. I therefore pass the following order :-

a) Arbitration Petition No.630 of 2009 is dismissed;

b) There shall be no order as to costs.

R.D. DHANUKA, J.