Supreme Court of India
Bijendra Nath Srivastava vs Mayank Srivastava on 10 August, 1994
Equivalent citations: 1994 AIR 2562, 1994 SCC (6) 117
Author: S Agrawal
Bench: Agrawal, S.C. (J)

PETITIONER:
BIJENDRA NATH SRIVASTAVA

Vs.

RESPONDENT:
MAYANK SRIVASTAVA

DATE OF JUDGMENT10/08/1994

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1994 AIR 2562 1994 SCC (6) 117
JT 1994 (5) 195 1994 SCALE (3)739

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by S.C. AGRAWAL, J.- The question for consideration in this appeal is whether the award made by the arbitrator dividing the movable as well as immovable properties of joint family amongst the six branches of the family is liable to be set aside. The award was accepted by the Civil Court (Vth Additional District & Sessions Judge, Lucknow) and a direction was given for making it the rule of the court and for drawing a decree in terms of the award. The High Court, in appeal, has set aside the award on the view that the award suffers from mistakes apparent on its face and that arbitrator had committed judicial misconduct in recording the proceedings before him.

2. Late Shri Bisheshwar Nath Srivastava, ex-Chief Judge of the Oudh Chief Court, who died on 18-7-1938, had six sons, namely, Bhagwati Nath, Bhupendra Nath, Bishwa Nath, Brij Nath, Bijendra Nath and Birendra Nath. Smt B.N. Srivastava died on 22-9-1957. Bhagwati Nath died on 8-2-1942 and Bishwa Nath died on 27-10-1946. After the death of Shri Bisheshwar Nath Srivastava, his eldest

son, Bhagwati Nath was looking after the joint family properties as the karta of the joint Hindu family and after his death, Bhupendra Nath, the second son of Shri Bisheshwar Nath Srivastava, was doing so. On 3-1-1966, an agreement was entered into between the six branches of the family headed by the six sons of Shri Bisheshwar Nath Srivastava whereby Shri Tribeni Prasad, a retired District Judge, who was the son-in-law of Shri Bisheshwar Nath Srivastava, was appointed as the sole arbitrator to divide the movable as well as immovable properties of late Shri Bisheshwar Nath Srivastava and Smt B.N. Srivastava into six shares according to his best judgment and allot one such share to each of the six parties. By this agreement it was also agreed that money that was needed from time to time by any of the parties to the said agreement and was advanced to him or to her by Bhupendra Nath out of the joint family money was out of his or her share in the joint family property and will be deducted from his or her share at the time of partition. It was also stated in the said agreement that all the parties to the agreement have taken certain amounts out of their shares in the joint family property from Bhupendra Nath or otherwise and that these amounts will be deducted from the shares of the parties to the said agreement at the time of partition. Party No. 1 to the said agreement was Bhupendra Nath who signed it for himself and his sons Paresh Kumar (minor), Prabhakar Kumar (minor), Prabhat Kumar and Pankaj Kumar; Party No. 2 were Smt Savitri Devi wife of Bhagwati Nath (deceased) and Dr Bireshwar Nath son of Bhagwati Nath (deceased) who signed for himself and his minor son Amitabh; Party No. 3 were Smt Chandrawati Devi wife of Bishwa Nath (deceased) and Bhuwaneshwar Nath son of Bishwa Nath (deceased); Party No. 4 was Brij Nath who signed for himself and his minor son Ravi; Party No. 5 was Bijendra Nath who signed for himself and his minor son Brijeshwar Nath; and Party No. 6 was Birendra Nath who signed for himself and his minor son, Mayank Srivastava (Respondent 1 herein).

3. Before the arbitrator a paper bearing No. 104/37-Kha was filed on 21-7-1966, giving the list of 17 immovable properties as well as the annual rent, municipal assessment and valuation of the same. The said paper contains the signatures of the heads of all the six branches. The arbitrator heard all the parties and afforded them opportunity to produce evidence and made an award whereunder he divided the immovable as well as movable properties in six shares for each of six parties to the arbitration. By the said award the joint family properties were divided as follows:

Immovable property	Rs53,600
Movable property	Rs29,692
Total	Rs83,292
Immovable property	Rs90,100
Movable property	Rs32,669
Total	Rs1,22,769
Immovable property	Rs69,480
Movable property	Rs28,307
Total	Rs97,787
Immovable property	Rs19,200
Movable property	Rs38,729
Total	Rs57,929
Immovable property	Rs26,400

Movable property	Rs17,786
Total	Rs44,186
Immovable property	Rs38,000
Movable property	Rs64,553
Total	Rs1,02,553

The said award was submitted for registration before the Registrar of Documents on 21-11-1966. On the same day, the arbitrator moved the Court of Civil Judge, Lucknow, for condonation of delay and for extension of time to file the award. The said application was allowed by the Civil Judge and time for filing the award was extended to 31-12-1966. Before the expiry of the said period the award was registered and it was filed in the Court of Civil Judge, Lucknow, on 6-12-1966. The Civil Judge issued notices to the parties and in response thereto objections to the award were filed by the Parties No. 1, 3 and 6. Party No. 1 subsequently did not press the objections and the objections were pressed only by Parties No. 3 and 6. In the said objections it was submitted that the award was liable to be set aside for the reason that the arbitrator was guilty of misconduct and acted in excess of his powers. In the objections that were filed by Party No. 6 the factum of the agreement of arbitration was also disputed. It was asserted that Shri Tribeni Prasad was not appointed as the arbitrator. The arbitrator died on 14-12-1970. Mayank Srivastava (Respondent 1), who was minor at the time when the objections were filed on behalf of Party No. 6, attained majority on 12-2-1973. On 24-3-1975, Mayank Srivastava filed an application under Section 151 and Order 6 Rule 17 CPC for implement and for amendment of the objections filed on behalf of Party No. 6. The said application was allowed by the Civil Judge by his order dated 8-5-1976. The objections were tried by the Civil Judge on the basis of affidavits.

4. The case was finally disposed of by the Vth Additional District & Sessions Judge, Lucknow, by his judgment dated 14-9-1977, whereby the objections were rejected and it was directed that the award dated 21-11-1966, given by the arbitrator, be made rule of the court and decree be drawn in the light of the said award. The Additional District & Sessions Judge held that the order dated 8-5-1976 whereby the amendment was allowed has become final and binding on the parties on the basis of principles of constructive res judicata and Party No. 5 could not challenge the correctness or legality of the said order. The Additional District & Sessions Judge found that the agreement dated 3-7-1966 is an arbitration agreement whereby the parties agreed to refer the matter to the arbitration of Shri Tribeni Prasad. As regards the objections raised by Party No. 6 regarding division of immovable properties, the Additional District & Sessions Judge held that it was within the exclusive jurisdiction of the arbitrator to fix the method and ways to determine the valuation of the properties and from the proceedings it is apparent that the method and procedure which he fixed was with the consent of the parties and no party raised any objection to this method and procedure before the arbitrator filed the award in the court to be made rule of the court and further that the paper (bearing No. 104/37-Kha) which was filed before the arbitrator, wherein the valuation of the properties was given, was signed by all the parties and that the arbitrator could fix the value of immovable properties on the basis of the valuation given in the said paper and the court could not go into the question whether the method adopted by the arbitrator for the valuation of the immovable properties was legally erroneous. As regards the valuation of the movable properties, the Additional

District & Sessions Judge held that from the proceedings recorded by the arbitrator it was apparent that the parties were asked to furnish valuation of each movable property yet none of the parties furnished the required prices and in view of para No. 9 of the arbitration agreement the arbitrator could divide the properties according to his discretion as no direction was given in the said agreement regarding valuation of the properties and mode of determination of such valuation. The Additional District & Sessions Judge also found that in the award valuation of movables allotted to each share has been given in lump sum figure or category-wise. As regards the objection in giving proprietary rights over the family deity to Party No. 2, the Additional District & Sessions Judge held that under the award the family deity had not been given to Party No. 2 and that since the property under which the Mandir is situated was allotted to the share of Party No. 2, the said party was entrusted with the care of the temple. It was also observed that in the affidavit dated 5- 1-1972, Party No. 2 has specifically admitted that the right to worship is available to all the parties. The Additional District & Sessions Judge has also mentioned that the award is a non-speaking award since the arbitrator was not enjoined to give a finding on each and every item specifically along with reasoning and he could award particular sum or particular share in a single word and the award had to be seen in this light. As regards objection that the shares had not been equally divided amongst the parties, the Additional District & Sessions Judge observed that under the agreement the division of the properties was to be made into six shares and at the time of division the arbitrator was to reduce the shares of the parties by the amount which was taken by the parties as advance from the joint family and the arbitrator was also to add any amount that he found due to that party from the joint family on account of claims of that party and that the arbitrator was not required to mention in the award the actual amount of advance which the arbitrator found out on the basis of evidence to be due to the joint family from any particular party. According to the Additional District & Sessions Judge the shares allotted were unequal because the amount of advance to the parties and claims of the parties were unequal which were taken by the arbitrator into consideration at the time of the partition.

5. Feeling aggrieved by the said decision of the Additional District & Sessions Judge, Mayank Srivastava, (Respondent 1 herein) as Party No. 6, and Bhuwaneshwar Nath Srivastava and Smt Chandrawati Devi Srivastava (Respondents 2 and 3) as Party No. 3 filed First Appeal No. 8 of 1978 in the Allahabad High Court. A revision, Civil Revision No. 399 of 1978, was also filed against the decree passed by the Additional District & Sessions Judge in terms of the award. The appeal and the revision were disposed of by the High Court by judgment dated 11-7-1983 whereby the appeal was allowed and the judgment and order of the Additional District & Sessions Judge were set aside and the objections of Respondents 1 to 3 and 14 against the award were allowed to the extent as indicated in the judgment of the High Court and the award dated 21-11-1966 was set aside. As a result Civil Revision No. 399 of 1978 was dismissed as infructuous.

6. The High Court rejected the submission of the appellants herein that the applications for amendment of the objections filed by Parties No. 3 and 6 were wrongly allowed by the trial court. The High Court also did not accept the contention urged on behalf of Respondents 1 and 3 herein (appellants in the High Court) assailing the validity of the agreement dated 3-1-1966 and held that the joinder of Smt Chandrawati in the agreement and giving of a share to her along with Bhuwaneshwar Nath did not vitiate the agreement inasmuch as there never had arisen any conflict

between Bhuwaneshwar Nath and his mother at any stage of the application. As regards non-joinder of the three daughters of Smt B.N. Srivastava, the High Court held that it is not open to any of the parties to the agreement to raise the said plea since they have benefited from the non-joinder of the aforesaid female heirs of Smt B.N. Srivastava in the agreement and the non-allotment of the shares to these female heirs has correspondingly enlarged the shares of all the parties. The High Court negatived the contention urged by Respondents 1 to 3 that the agreement dated 3-1-1966 was not an arbitration agreement and held that the said agreement is to be construed as arbitration agreement. The High Court also negatived the contention urged on behalf of Respondents 1 to 3 that the decree was bad for want of an application under Section 17 of the Arbitration Act, 1940 (hereinafter referred to as 'the Act') by any party. The High Court rejected the contention that as the arbitrator had already given an interim award on 5-2-1966 in respect of utensils it was not open to the arbitrator to make a second award with regard to utensils. The High Court has, however, found that in recording the proceedings before him the arbitrator has incorrectly shown the presence of Party No. 6 from 9-10-1966 onwards though that party was actually absent on those dates and that it constitutes judicial misconduct. The High Court has also found that the arbitrator has deviated from the judicial standard expected of him as an arbitrator in returning the documents mentioned in paper No. 103/347-Kha of the arbitration record to Bhupendra Nath, Party No. 1, on 1-12-1966, after the arbitrator has already made the award and a few days before filing it in court along with an application under Section 14 of the Arbitration Act. The High Court has held that the award was not totally non-speaking award insofar as mode of valuation of the immovable properties is concerned. The High Court has further held that the award suffers from several mistakes apparent on its face. The High Court has also held that the management of the family deity and control over movables attached thereto had been illegally allotted to the share of one party alone. It was also held that the arbitrator has failed to decide the disputes about the amount of advances taken from the joint family funds by the parties respectively and to make adjustments in respect thereof in the award as required to do by the arbitration agreement and has transgressed the limits within which the arbitrator was required to act in making the award.

7. Aggrieved by the judgment of the High Court the appellants have filed this appeal after obtaining special leave. During the pendency of the appeal some of the parties have alienated some of the properties which have been assigned to them under the impugned award. Bijendra Nath, Appellant 1, has filed an additional affidavit to say that Birendra Nath (Respondent 14) Party No. 6 has executed

(i) a sale deed on 15-11-1984 in respect of southern-half portion of the double storeyed premises situated at No. 178/157 (old number) 178/159 (new number), Badri Nath Road, Golaganj, Lucknow for Rs 75,000 wherein the vendor has claimed to be the owner of the property by virtue of the impugned arbitration award; (ii) a sale deed on 25-2-1988 in respect of a portion of Narain House No. 195/44, Jagat Narain Road, Lucknow, for Rs 1,10,000, wherein the vendor has claimed to be the absolute owner of the property by virtue of impugned award; (iii) a sale deed dated 25-2-1988 in respect of another portion of Narain House No. 195/44, Jagat Narain Road, Lucknow, for a sum of Rs 30,000, wherein also the vendor has claimed to be the owner of the said property by virtue of the impugned award; and (iv) an agreement to sell dated 25-8-1989 in respect of Badri Batika, bearing Khasra No. 178 (old), 199/1 (new), situated at Village Fatehpur, Pargana Tehsil and District

Lucknow and the construction Shivala Dalen, pukka well, etc. for a sum of Rs 3,75,000 wherein the vendor has claimed to be the owner of the said property by virtue of the impugned award. Similarly Smt Chandrawati Devi, Respondent 2, is said to have executed a sale deed on 29-12-1993 in respect of her 50% share in the land with building bearing Corporation No. 178/158 situated at Badri Nath Road, Golaganj, Lucknow for Rs 50,00,000 and Bhuwaneshwar Nath, Respondent 3, is said to have executed a sale deed dated 31-12-1993 in respect of his half share in the said property for Rs 5,00,000. Mayank Srivastava, Respondent 1 herein, has filed an additional affidavit dated 30-3-1994 in which he has not disputed the aforesaid transfers but has alleged that immovable properties allotted to the share of Brijendra Nath, Appellant 1 herein, under the impugned award have also been sold under (i) five sale deeds executed on 20-8-1975 and five sale deeds executed on 2-2-1976 in respect of portions of bhumidhari plot Nos. 3 and 4 of Village Qasimpur Pakri;

(ii) sale deed executed on 1-2-1985 in respect of 30,025 sq. ft. of land of plot No. 238 for Rs 3,06,245; (iii) sale deed executed on 12-7-1988 in respect of 2000 sq. ft. of land out of plot No. 4 for Rs 40,000; (iv) sale deed executed on 18-1-1990 in respect of 800. sq. ft. of land out of plot No. 140/1 for Rs 16,000; and (v) sale deed executed on 28-2-1990 in respect of 2340 sq. ft. of land out of plot No. 140/1 for Rs 70,200 and that Brijeshwar Nath son of Bijendra Nath, Appellant 1 herein, has sold 1361 sq. ft. of land out of plot No. 140/1/114 for Rs 27,000 by a sale deed registered on 12-4-1993. It has been further stated in the said additional affidavit that Ravi Srivastava, Appellant 2, has executed (i) an agreement for sale of 5422 sq. ft. of land which agreement was registered by Sub-Registrar at Lucknow on 8-3-1983; (ii) agreement for sale executed on 27-1-1988 in respect of plot No. F out of the open land at Outram Road in Lucknow allotted to his share under the impugned award; (iii) agreement to sell executed on 1-2-1991 in respect of 400 sq. ft. of land of Chaulakhi Kothi allotted to his share under the award for Rs 8,50,000; and (iv) agreement of sale executed on 26-3-1993 along with Respondents 13, 17 and 18, in respect of 8000 sq. ft. of Chaulakhi Kothi for Rs 6,00,000. It has been further alleged that Respondents 9, 1 0 and II have sold away stable land and Khandhal allotted to them under the impugned award by a registered sale deed executed on 2-5-1991, and that on 22-4-1991 they have also executed an agreement for sale of 'Glenroy' at Mussoorie which was allotted to them under the impugned award. It would thus appear that during the pendency of the proceedings the parties, including Parties No. 3 and 6, have executed several documents of transfer in respect of properties which were allotted to them under the impugned award.

8. In this appeal Shri Kailash Vasudev, the learned counsel appearing for Respondent 8, representing Party No. 1, has supported the appellants and the parties who have contested the appeal are Party No. 3 (Respondents 2 and 3) and Party No. 6 (Respondents 1 and 14).

9. Shri S.B. Sanyal, the learned Senior Counsel appearing for the appellants, has urged that the application filed by Respondent 1 for amending the objection petition was wrongly allowed by the trial court and the High Court was not right in rejecting the submissions urged by the appellants to assail the said order. The learned counsel has also urged that it is permissible in law for the arbitrator to make a non-speaking award and that the impugned award is such an award and that the High Court was not justified in setting it aside on the view that it suffers from several mistakes apparent on its face. The learned counsel has contended that the High Court was in error in holding

that the paper bearing No. 104/37-Kha of the arbitrator's award was not an agreed statement of valuation of immovable properties and that the immovable properties could not be properly divided by the arbitrator on that basis. Shri Sanyal has submitted that the High Court was not justified in holding that the arbitrator has committed judicial misconduct in incorrectly recording the presence of Party No. 6 from 9-10-1966 onwards in the proceedings before him although the said party was actually absent on those days.

10. Shri G.L. Sanghi, the learned Senior Counsel appearing for Respondents 1 and 14, has supported the judgment of the High Court and has urged that the High Court has rightly upheld the order passed by the trial court allowing the amendment in the objection petition filed by Respondent 14 and further that the High Court was right in setting aside the award on the ground that the arbitrator had misconducted the proceedings and that the award being not a non-speaking award suffers from several mistakes apparent on its face.

11. We will first take up for consideration the question regarding amendment of the objection petition. In this regard it may be mentioned that amendment was allowed in the objection petition filed by Respondents 2 and 3 (Party No.

3) by order dated 9-10-1969 and in the objection petition filed by Respondent 14 (Party No. 6) by order dated 8-5- 1976. The correctness of the latter order dated 8-5-1976 has been assailed by the appellants before us and we will confine ourselves to the same. In this context it may be stated that after the award was filed by the arbitrator in the court on 6-12-1966, notice was issued to the parties and the said notice was served on Respondent 14 on 21-5-1967. The period of limitation for filing the objections was to expire on 3-7-1967 and Respondent 14 filed the objections under Sections 30 and 33 of the Arbitration Act on 3-7-1967 on behalf of himself and Respondent 1, Mayank Srivastava, who was a minor at that time. The said objections were 45 in number and in a number of objections it was alleged that the arbitrator had misconducted himself. None of the said objections contains an allegation that the arbitrator had misconducted by incorrectly recording in the proceedings before him the presence of Respondent 14 on certain dates although he was actually absent on those dates. Mayank Srivastava, Respondent 1, attained majority on 14-2-1973. He did not file any fresh objection within 30 days of his attaining majority as provided under Section 6 read with Article 119 of the Limitation Act, 1963. During the course of the proceedings before the trial court Respondent 14 wanted to adduce evidence to which objection was raised by the appellants on the ground that it was not covered by the original objections. Thereupon on 24-3-1975 Mayank Srivastava, Respondent 1, filed an application for impleadment as a party in the proceedings and for raising additional objections. The said application of Respondent 1 was allowed by the Civil Judge by order dated 8-5-1976 which reads as follows:

> "Heard learned counsel for the parties at length and gone through the objections already made and the earlier amendment proposed to be made therein. The objector by the proposed amendment wants to clarify certain points and even to add fresh particulars of alleged misconduct having been committed by the arbitrator in giving the award. The proposed amendment does not amount to depriving the opposite party from any right accrued to them. Further the amendment is necessary in order

> to decide the matter in controversy involved between the parties. Thus in order to decide the question finally and effectively the amendment proposed is necessary and essential. Further, the opposite party is not prejudiced and can very well be compensated in terms of money. Thus for the aforesaid reasons the amendment is to be allowed on Rs 50 as costs."

12. Before the High Court it was urged on behalf of the appellants that new pleas taken by Respondent 1 in the amendment application were wrongly entertained inasmuch as an objection to the award could not be raised after the expiry of 30 days from the date of service of notice under Section 14. It was submitted that even prior to his attaining majority Respondent 1 was aware of the arbitration proceedings inasmuch as on 13-1-1972 his presence is noted in proceedings taken by the Commissioner appointed by the court and that Respondent 1 had also received copy of paper No. Kha-23/24 on 21-5-1967. The High Court has found that Respondent 1 did have knowledge of the proceedings even during minority and also had constructive notice of the filing of the award after the same was filed and that if no objection had been filed by Respondent 14 within 30 days Respondent 1 could have been precluded from filing new objections on 24-3-1975 due to bar of limitation. The High Court has however observed that the appellants are estopped from challenging the amendments after having accepted costs allowed to them. The High Court has also held that all the pleas that were canvassed on behalf of Respondents 1 to 3 herein were basically taken in the objections that were filed by Respondent 14 and that paragraphs 46 to 60 which were added by Respondent 1 by way of amendment application contain merely better particulars of what had already been pleaded in the original objections.

13. In view of the finding recorded by the High Court that Respondent 1 would have been precluded from filing a new objection petition on 24-3-1975 due to the bar of limitation we find it difficult to agree with the view of the High Court that the trial court did not act on any wrong principle while allowing the amendments. Since the grievance of the appellants relates to paragraphs 52 and 53 which have been added by way of amendment we have examined the averments contained therein with reference to the original objections and we are of the opinion that the High Court was in error in treating the said amendments as merely better particulars of what had already been pleaded in the original objections. The High Court appears to have lost sight of the well recognised distinction between statement of material facts which is required under Order 6 Rule 2 CPC and particulars which are required to be stated under Order 6 Rule 4 CPC. In the context of Section 83(1)(a) and (b) of the Representation of the People Act, 1951, which contains provisions similar to Order 6 Rules 2 and 4 CPC, this Court, after posing the question, what is the difference between material facts and particulars, has observed': (SCC pp. 250- 5 1, para 29) "The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct.

1 Samant N. Balkrishna v. George Fernandez, (1969) 3 SCC 238, 250-51 : (1969) 3 SCR 603, 622 and 623 The material facts thus will show the ground of corrupt practice and the complete cause of

action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficiency of the words 'material facts' will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all.

If a petitioner has omitted to allege a corrupt practice, he cannot be permitted to give particulars of the corrupt practice. One cannot under the cover of particulars of a corrupt practice give particulars of a new corrupt practice. They constitute different causes of action."

This is in consonance with the rule that a charge of fraud must be substantially proved as laid and that when one kind of fraud is charged, another kind of fraud cannot, upon the failure of proof, be substituted for it. (See : Abdool Hoosein Zenail Abadin v. Charles Agnew Turner2.) The same is true for the charge of misconduct. This means under Order 6 Rule 4 CPC particulars have to be furnished of the plea of fraud or misconduct raised in accordance with Order 6 Rule 2 CPC and it is not permissible to introduce by way of particulars a plea of fraud or misconduct other than that raised in the pleadings.

14. In paragraph 52 which has been introduced by way of amendment it has been alleged that the arbitrator had misconducted the proceedings by returning the papers and documents specified in sub-paragraphs (i) to (iii) to the parties who had submitted the said papers and documents during the course of the proceedings. In paragraph 53 it has been alleged that the arbitrator had misconducted the proceedings in falsely showing the presence of Birendra Nath Srivastava, Respondent 14, in the proceedings dated 18-10- 1966, 20-10-1966, 25-10-1966 and 4-11-1966 and 10-11-1966 in spite of the fact that he fully knew that Respondent 14 was absent from these proceedings from 10-10-1966 till the close of the proceedings on 10-11-1966. We have carefully perused the averments contained in the original objections filed by Respondent 14 on 3-7-1967. Although in the said objections various acts of misconduct have been imputed to the arbitrator in several paragraphs, we have been unable to find an averment in any of the paragraphs imputing misconducts of the nature mentioned in paragraphs 52 and 53 which were sought to be inserted by way of amendment. The High 2 (1887) 14 1 A 11 1, 125: ILR (1887) 11 Bom 620 (PC) Court has, however, referred to paragraph numbers 41 and 45 of the original objection petition, which read as under:

> "41. That it is apparent on the face of the record filed by the arbitrator that between the dates fixed for hearing of case, the arbitrator met and heard individual members in the absence of others. The enquiries made by the arbitrator behind the back of others have been kept secret and undisclosed. This procedure of the arbitrator amounts to legal misconduct in the proceedings.
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> 45. That in conducting the proceedings the arbitrator has failed to follow the principle of natural justice and the objector was not given equal opportunity with others."

15. The objection in paragraph 41 was to the effect that during the course of the arbitration proceedings the arbitrator had met and heard individual members in the absence of others and the enquiries made by the arbitrator behind the back of others had been kept secret and disclosed. The said objection does not refer to any misconduct arising on account of recording the presence of a party in the proceedings even though the said party was not present on the date to which the proceedings relate. The grievance in paragraph 41 relates to proceedings before the arbitrator dated 10-2-1966, 14-2-1966, 20-2-1966 and 19-4- 1966 and 27-7-1966, 28-7-1966, 31-7-1966 and 10-8-1966, 14-8-1966 and 4-9-1966 and 5-9-1966 and has been considered separately by the High Court. The High Court has pointed out that as regards proceedings up to 25-7-1966 all the parties in their application for extension of time dated 25- 7-1966 have recorded that the arbitrator had "been extremely fair so far during the conduct of the proceedings". In view of the said statement the High Court felt that it was required to scrutinise the conduct of arbitrator only after 25-7-1966. The High Court has observed that even though on different dates some of the parties were not present before the arbitrator but the said conduct had been waived and acquiesced by the parties and could not be complained of in the proceedings. This would clearly demonstrate that the misconduct which has been alleged in paragraph number 41 of the original objection petition was a misconduct of a different nature and not the misconducts referred to in paragraphs 52 and 53.

16. Insofar as the objection in paragraph 45 of the original objection petition is concerned we find that it is a general objection regarding failure to follow the principles of natural justice by the arbitrator and denial of equal opportunity to the objector. The misconducts referred to in paragraphs 52 and 53 are of different nature and are not covered by the objection in paragraph 45.

17. Another reason given by the High Court for holding that the order dated 8-5-1976 allowing the amendment could not be assailed was that the said order was subject to payment of costs and since cost has already been accepted by the appellants they are estopped from challenging the amendment. As indicated earlier there were two orders whereby amendments were allowed. One was order dated 9-10- 1969 whereby the amendments sought by Respondents 2 and 3 in the objection petition filed by them were allowed and the other was order dated 8-5-1976 whereby the amendments in objection petition filed by Respondent 14 were allowed. The contention based on estoppel arising from acceptance of costs awarded under the order allowing the amendment was raised by Shri Dhasmana, the learned counsel for Bhuwaneshwar Nath, Respondent 3, with regard to order dated 9-101969. No such contention was urged by the learned counsel for Respondents 1 and 14 herein as regards order dated 8-5-1976. The acceptance of the contention urged by Shri Dhasmana, on behalf of Respondent 2, by the High Court can only mean that the order dated 9-10-1969 has been upheld on that basis. Since no such contention was advanced by the learned counsel for Respondents 1 and 14 in support of the order dated 8-5-1976 the said order cannot be said to have been upheld on that basis.

18. That apart the principle of estoppel which precludes a party from assailing an order allowing a petition subject to payment of costs where the other party has accepted the costs in pursuance of the said order applies only in those cases where the order is in the nature of a conditional order and payment of costs is a condition precedent to the petition being allowed. In such a case it is open to the party not to accept the benefit of cost and thus avoid the consequence of being deprived of the

right to challenge the order on merits. The said principle would not apply to a case where the direction for payment of costs is not a condition on which the petition is allowed and costs have been awarded independently in exercise of the discretionary power of the court to award costs because in such a case the party who has been awarded costs has no opportunity to waive his right to question the validity or correctness of the order. The decision of the Andhra Pradesh High Court in Metal Press Works Ltd. v. Guntur Merchants Cotton Press Co. Ltd. 3 on which reliance has been placed by the High Court, proceeds on the basis that awarding of costs was, in fact and substance, a part of the entire order allowing amendment in written statement and the said order was a conditional one. The decision of the Madras High Court in Sree Mahant Prayag Dossjee Varu v. Raja Venkata Perumal4 and the decisions of the Patna High Court in Ramcharan Mahto v. Custodian of Evacuee Property5 and Kapura Kuer v. Narain Singh6 on which reliance has been placed in the said judgment of the Andhra Pradesh High Court also emphasise that the orders under challenge were conditional orders and payment of costs was a condition precedent to allowing the petition. In J. Devaiah v. Nagappa7, the order allowing amendment of the election petition contained a direction regarding payment of costs. It was held that the application was allowed 3 AIR 1976 AP 205 : (1975) 1 APLJ (HC) 283 4 AIR 1933 Mad 410: 1932 MWN 11 18: 142 IC 903 5 AIR 1964 Pat 275 1964 BUR 291 6 AIR 1949 Pat 491 27 Pat 187 7 AIR 1965 Mys 102 without any condition and that the order was not a conditional order and principle of estoppel was held inapplicable.

19. A perusal of order dated 8-5-1976 shows that the said order is not a conditional order. The Civil Judge, after considering the merits has allowed the proposed amendments. The costs were awarded not as a condition precedent to allowing the amendment but by way of exercise of the discretionary power of the court to award costs to the opposite party. It may also be mentioned that the appellants did not accept the said order dated 8-5-1976. They assailed the validity of the same at the stage of final hearing before the trial court but the said contention was rejected by the Additional District & Sessions Judge on the view that the said order had become final as regards the proceedings before him and the same could not be recalled or reviewed. Thereafter, the appellants assailed the correctness of the order dated 8-5-1976 in the appeal filed by Respondents 1 and 3 in the High Court. The principle of estoppel arising from acceptance of costs so to preclude the appellants from challenging the validity of the order dated 8-5-1976 cannot, therefore, be invoked in the facts and circumstances of the present case. Since the grounds given by the High Court for upholding the order dated 5-5-1976 cannot be affirmed the amendments allowed by the said order insofar as they relate to insertion of paragraphs 52 and 53 in the objection petition filed by Respondent 14 are set aside.

20. We would now proceed to deal with the question as to whether the High Court was right in setting aside the award made by the arbitrator. As regards an award made by an arbitrator under the Act the law is well settled that the arbitrator's award is generally considered binding between the parties since he is the tribunal selected by the parties. The power of the court to set aside an award is restricted to the grounds set out in Section 30 of the Act, namely, (a) where the arbitrator has misconducted himself or the proceedings; (b) where the award has been made after the issue of an order by the court superseding the arbitration or after arbitration proceedings have become invalid under Section 35; and (c) where the award has been improperly procured or is otherwise invalid. The court can set aside the award under clause (c) of Section 30 if it suffers from an error on the face

of the award. An award might be set aside on the ground of an error on the face of it when the reasons given by the decision, either in the award or in any document incorporated with it, are based upon a legal proposition which is erroneous. In the absence of any reasons for making the award, it is not open to the court to interfere with the award. The court cannot probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. An award is not invalid merely because by a process of inference and argument it may be demonstrated that the arbitrator has committed grave mistake in arriving at his conclusion. The arbitrator is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or deed of settlement he is required to give such reasons. If the arbitrator or umpire chooses to give reasons in support of his decision it would be open to the court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the basis of the recording of such reasons. The reasonableness of the reasons given by the arbitrator cannot, however, be challenged. The arbitrator is the sole judge of the quality as well as the quantity of the evidence and it will not be for the court to take upon itself the task of being a judge of the evidence before the arbitrator. The court should approach an award with a desire to support it, if that is reasonably possible, rather than to destroy it by calling it illegal. (See: Champsey Bhara and Co. v. Jivraj Balloo Spg. and Wvg. Co. Ltd.8; Jivarajbhai Ujamshi Sheth v. Chintamanrao Balaji9; Sudarsan Trading Co. v. Govt. of Kerala10; Raipur Development Authority v. Chokhamal Contractors 11 and Santa Sila Devi v. Dhirendra Nath Sen 12.)

21. In the present case the High Court has set aside the award of the arbitrator primarily on two grounds, viz., (i) the arbitrator had misconducted the proceedings by incorrectly recording the presence of Party No. 6 (Respondent 14 herein) from 9-10-1966 onwards in the proceedings before him although that party was actually absent on those days; and (ii) the award suffers from several mistakes apparent on its face.

22. We would first examine whether the arbitrator can be said to have misconducted the proceedings by incorrectly recording the presence of Respondent 14 on certain dates even though the said respondent was actually absent on those dates. In this regard it may be mentioned that on behalf of Respondent 1 it was contended before the trial court as well as the High Court that the arbitrator was partial and the award had been improperly procured from him by the parties who stand favoured thereby. The trial court rejected the said contention with the observation:

> "Nothing was shown how the arbitrator has tried to favour Party Nos. 4 and 5." The High Court has also rejected the contention and has held:
>
> "No evidence has been pointed out to us which may show that the arbitrator was partially disposed towards or against any of the parties.
>
> Nor has any evidence of corruption or dishonesty been given."

The allegation of misconduct which has been found established by the High Court is contained in paragraph 53 which was introduced by way of amendment allowed by the trial court under order dated 8-5-1976. The said order insofar as it relates to the said amendment has been found to be

unsustainable by us.

23. Even though we are of the view that paragraph 53 was wrongly allowed to be included in the objection petition by way of amendment, we 8 LR 50IA324,331 ?AIR 1923PC66 9 (1964) 5 SCR 480, 494-95 : AIR 1965 SC 214 10 (1989) 2 SCC 38, 53-54 :(1989) 1 SCR 665, 683-84 11 (1989) 2 SCC 721 : (1989) 3 SCR 144 12 (1964) 3 SCR 410, 421 : AIR 1963 SC 1677 propose to deal with the finding recorded by the High Court in respect of this objection. In this context it would be relevant to note that on 6-12-1966 the arbitrator had filed in the court the award as well as the record of proceedings before him. The objection petition was filed by Respondent 14 after more than six months on 3-7-1967. He had sufficient time to inspect the said record before filing the objection petition. He did not, however, raise any objection in the objection petition to the effect that he had not been taking part in the proceedings before the arbitrator from 9-10-1966 onwards and that even though he was absent the arbitrator had incorrectly recorded his presence in the proceedings since then. This plea was raised for the first time by Respondent 14 in paragraph 5 8 of his affidavit dated 1-1-1972, after the arbitrator had died on 14-12-1970. The said plea was repeated in paragraph 15 of the affidavit of Respondent 14 dated 4-7-1973 filed by way of evidence. Bijendra Nath, Appellant 1, in his counter-affidavit dated 20-1-1975 raised an objection that the contents of paragraph 15 of the said affidavit of Respondent 14 are beyond the pleadings of Party No. 6. Thereupon Respondent 1 filed an application for impleadment and amendment so as to incorporate paragraph No. 53 in the objection petition. It would thus appear that during the lifetime of the arbitrator Respondent 14 remained silent about this allegation of misconduct and raised it only in 1972 after the death of the arbitrator. The High Court was conscious of the fact that this plea was taken only through an amendment and it could be criticised as an afterthought. The only reason that has weighed with the High Court in accepting the version of Respondent 14 is that the signatures of Respondent 14 are not contained in the order sheets of the proceedings for the period subsequent to 9-10- 1966 till the conclusion of the arbitration proceedings although the signatures of other parties are found in the said proceedings and that the practice followed by the arbitrator was to obtain the signatures of all the parties under the proceedings of a particular date irrespective of the fact whether that party was present or not on that date. The charge of misconduct levelled by Respondent 14 against the arbitrator was a very serious charge. The arbitrator was a retired District Judge who was closely related to the parties and who (as found by the High Court) until sometime before 9-10-1966 enjoyed the respect and confidence of all parties. The High Court has not given any reason why the arbitrator should have falsely recorded the presence of Respondent 14 at the concluding stages of the arbitral proceedings. In the absence of corroboration by other contemporaneous evidence the High Court, in our opinion, should not have disbelieved the record of the arbitrator merely on the ground that signatures of Respondent 14 are not found in the record of proceedings. No evidence has been produced to show that when the matter was pending before the arbitrator Respondent 14 had expressed his desire to withdraw from the proceedings or his having raised any objection before the arbitrator about his presence being wrongly recorded in the proceedings subsequent to 9-10-1976. The fact that other parties have appended their signatures to the proceedings which recorded the presence of Party No. 6 (Respondent 14) without raising any objection about the correctness of the said record lends support to the correctness of the said record. As regards the absence of an affidavit by Party No. 1 to rebut the assertion in the affidavits filed by Respondent 14 it may be stated that the affidavits of Respondent 14 dated 1-1-1972 and 4-7-1973 were filed before the amendment of the objection

petition wherein no such objection had been taken and this fact was pointed out by Appellant 1 in his counter- affidavit dated 20-1-1975 filed in reply to the affidavits of Respondent 14 dated 1-1-1972 and 4-7-1973. No further affidavit was filed by Respondent 14 or Respondent 1 after the order dated 8-5-1976 allowing the amendment. There was, therefore, no occasion for filing a rebuttal to any such allegation.

24. It is also pertinent to mention that Respondent 14 had come forward with the case that he had made an offer of Rs 2,50,000 for Chaulakhi Kothi before the arbitrator and in this regard the trial court has observed that after the death of the arbitrator on 14-12-1970 Respondent 14 had filed paper No. 137/Ga on 16-8-1971 containing offer of Rs 2,50,000 for Chaulakhi Kothi and he also took aid of the brother-in-law of Bhupendra Nath, Party 1, who had filed an affidavit saying such an offer was made. The trial court has found that while in paper No. 137/Ga the date of the alleged offer is mentioned to be 18-4-1966 the brother-in- law in his affidavit (paper No. 241/Kha) has deposed that the offer was typed and handed over to the arbitrator on 19- 4-1966. The trial court has also found that there was tampering of paper No. 137/Ga in the court and has observed:

> "Actually it appears that no offer was made by Party No. 6 and he has tried to make out a case of offer after the death of the arbitrator."

The said finding of the Additional District & Sessions Judge has not been upset by the High Court.

25. Having regard to the aforesaid facts and circumstances we are of the opinion that it would be unsafe to place reliance on the uncorroborated assertion of Respondent 14, as contained in the affidavits filed by him, the truth of which has not been tested in cross-examination. The High Court, in our view, was not justified in recording a finding against the arbitrator on the basis of such evidence and in setting aside the award on this ground.

26. The other finding of misconduct relates to the return of documents including municipal assessment list by the arbitrator to Party No. 1. In this regard it may be mentioned that in the proceedings of the arbitrator dated 27-7-1966 it is stated:

> "Party No. 1 has brought his written statement, accounts and Municipal Assessment Statements. They have been explained. Party No. 1 read over his written statement and accounts.
>
> Party No.1 has taken back his written statement and some accounts with my permission to get them typed and arranged within a few days.
>
> Assessment Statements and some accounts have been left for my examination." In the order sheet dated 28-7-1966 the arbitrator has recorded:
>
> "Party No. 1 has taken back Municipal Assessment Statements and some accounts to get them typed.

Party No. 1 will file his written statement account on 30-7-1966."

30-7-1966 order records:

"Party No. 1 says that his written statement has not been typed. He requires a few days' time to file them. Party No. 1 read over his will file his written statement and accounts on 2-8-1966."

Order dated 14-8-1966 shows:

"The parties have scrutinised and considered the accounts of each other."

27. From the aforesaid orders it would appear that the Municipal Assessment Statements had earlier been filed by Party No. 1 before the arbitrator on 27-7-1966 but they were taken back by him on 28-7-1966 to get them typed. But thereafter the same could not be filed. There is nothing to show that the said Municipal Assessment Statements had been taken on record as part of evidence or reliance has been placed on them. If any of the parties wanted to rely on them it was open to them to produce them as a part of their evidence. They did not, however, choose to do so. In these circumstances, the fact that the Municipal Assessment Statements were allowed to be taken back by Party No. 1 for typing and the same were not produced again by Party No. 1 before the arbitrator could not be construed to mean that the arbitrator had committed a misconduct.

28. It has also been observed by the High Court that large number of documents were filed by Party No. 1 before the arbitrator vide paper bearing No. 103/347-348/Kha and that out of 50 serial numbers in the list all the documents except those mentioned at serial numbers 20 and 50, were returned by the arbitrator on 1-12-1966, after he had already made the award and a few days before filing it in the court. The High Court has referred to the provisions of Section 14 of the Act which lays down that the "arbitrator shall cause the award, together with any depositions and documents which may have been taken and proved before them, to be filed in court" and has held that in view of the said statutory duty it was not correct on the part of the arbitrator to return the documents mentioned in the list (paper No. 103/347-348/Kha) after making the award. According to the High Court the arbitrator deviated from the judicial standard expected of him as an arbitrator in returning these documents. The High Court has not indicated the nature of these documents and it is not clear whether they were part of the evidence produced before the arbitrator. The explanation offered for the return of the documents was that Bhupendra Nath being the karta of the family often needs the documents in connection with the management of the family property, was rejected by the High Court on the view that Bhupendra Nath had ceased to be the karta as soon as the agreement dated 3-1-1966 was entered between the parties and it was not for him to manage joint property but for the respective parties to manage the properties falling to the share of each in accordance with the decision of the arbitrator if and when confirmed by the court. In the absence of any material to show that the documents which were returned by the arbitrator to Party No. 1 were part of the evidence produced before the arbitrator it cannot be said that the arbitrator was at fault in returning the said documents to Party No. 1 after making the award. Moreover the said conduct of the arbitrator cannot be regarded as a misconduct in the conduct of the proceedings or an error in making the

award so as to justify the setting aside of the award. We are, therefore, unable to uphold the findings recorded by the High Court in setting aside award on ground of misconduct.

29. The High Court has found that the award suffers from mistakes apparent on its face for the reason that (i) the arbitrator committed error in applying wrong basis for valuation of immovable properties; (ii) considerable items of valuable movables have been omitted from the division and thereby the parties who were respectively in actual possession or enjoyment thereof have been allowed to retain undue advantage inasmuch as no adjustment has been made in respect thereof from their shares while making the allotments; (iii) the management of the family deity and control over movables attached thereto have been illegally allotted to the share of one party alone; (iv) the arbitrator has failed to decide the disputes about the amounts of advances taken from the joint family funds by the parties respectively, and to make adjustments in respect thereof in his award, as he was required to do by the arbitration agreement; and (v) the value of the shares even according to the valuation made by the arbitrator, is unequal.

30. We would first examine the matter of valuation of immovable properties by the arbitrator. This raises the question whether the award is a speaking award containing reasons or a non-speaking one. If it is a nonspeaking award it is not open to challenge on the ground of error apparent on the face of the award. The High Court has proceeded on basis that the award is not totally non-speaking and insofar as the mode of valuation of these properties is concerned, it very much speaks to the extent that the arbitrator discloses two things, namely-

> (i) his factual assertion that such and such is the annual letting value of the property as assessed by the Municipal Corporation; and
>
> (ii) his view that the market value should be 20 times the assessed annual letting value.

31. We find it difficult to agree with the said view of the High Court. There is nothing in the award to indicate the process of reasoning adopted by the arbitrator to arrive at the market value of immovable properties. Merely because the arbitrator has mentioned the municipal annual rental value of the property before indicating the market value of the same does not mean that the value is fixed on the basis of the rental value and the award is a reasoned award justifying the court to examine whether the award suffers from an error. It is settled law that it is not open to the court to deduce reasons in the award or in the record accompanying the award and proceed to examine whether those reasons were right or erroneous. This is what appears to have been done by the High Court in the present case. This was impermissible. We are, therefore, of the opinion that the High Court was in error in going into the question of valuation of immovable properties by the arbitrator in the award.

32. Though it is not necessary, but since the High Court has dealt with the question of valuation of immovable properties at some length, we have examined the matter. We must express our inability to endorse the view of the High Court that the valuation as fixed by the arbitration cannot be sustained. For this purpose we will proceed on the basis that the valuation in the award has been

fixed on the basis of the valuation given in paper No. 104/37-Kha filed by Party No. 2 before the arbitrator on 21-7-1966. As noticed earlier the trial court has held that the said paper contained the valuation of properties as agreed by all the six parties who had appended their signatures to it and that the arbitrator could accept the same as the valuation of the properties. The High Court has, however, disagreed with the said view and has held that the said paper did not contain the valuation of properties as agreed by all the parties and that the said paper was filed by Party No. 2 and other parties had put their initials only in token of having noted the contents of the said paper. The High Court has also held that the valuation as fixed in the said paper was not correct.

33. With regard to filing of paper No. 104/37-Kha it may be stated that on 16-5-1966 the arbitrator had passed the following order:

> "The parties are requested to furnish by 21-5- 1966 Municipal Assessment of all the immovable properties of the joint family and value of all the articles kept in Safe Almirah." On 16-7-1966 the arbitrator has recorded: "Municipal assessment and valuation of all the joint family properties for the purpose of stamp duty discussed."

34. On 21-7-1966 Party No. 2 filed one application and one statement of annual assessment valuation of all the 17 properties. The said statement of annual assessment valuation (marked paper No. 104/37-Kha) bears the signatures of all the six parties including Respondents 2 and 14. On 21-7-1966 the arbitrator has recorded:

> "Party No. 2 filed one application and one statement of annual assessment valuation of all the 17 properties.
>
> All the above applications and statement will be considered on 30-7-1966 date already fixed for evidence.
>
> shows that House Property Assessment Statements were filed but this is not a fact. No statement was handed over."

35. In the award the arbitrator has divided the immovable properties in six lots for each of the six parties and against each property he has indicated the market value of the same which is the same as stated in paper No. 104/37-Kha filed before the arbitrator on 21-7-1966. The trial court was of the view that the parties did not produce any evidence regarding the valuation of the properties except paper No. 104/37-Kha signed by all the parties which showed that the parties themselves had fixed their own valuation. The trial court has also observed that the arbitrator decided the market value of the various properties as given in the award after thorough discussion in the presence of the parties including Party No. 6 and that the parties did not raise any objection about valuation before the arbitrator till the date of award or before the Sub-Registrar at the time of registration of the award and that in the objection also Party No. 6 did not say that the principle of 20 times annual municipal assessment has not resulted in arriving at the correct market value of the properties. The High Court has, however, held that paper No. 104/37-Kha was not an agreed valuation list submitted by the parties to the arbitrator inasmuch as the paper does not mention anything about the valuation being

agreed and the arbitrator also has not used the word 'agreed' anywhere in the award. With regard to the initials of all the parties at the bottom of the said paper the High Court has observed that the said initials can only be treated as having been made in token of the parties other than Party No. 2 having noted the contents of the paper. The High Court also made a reference to the application submitted in the trial court by Party No. 5 on 5-1-1972 for a direction that the said paper be placed in a sealed cover and the reply filed by Party No. 2 on 6-1-1972 to the said application wherein it was stated that the said paper was filed by him (Party No. 2) on behalf of all the parties after thorough discussion between all of them, as well as the application moved by Party No. 6 on 1-2-1972 saying that Party No. 2 should file an affidavit in support of allegations contained in his application dated 6- 1-1972 and the subsequent application dated 12-2-1972 submitted by Party No. 2 that since the application of Party No. 5 was only for sealing of the document Party No. 2 has no objection to the document being sealed and, therefore, Party No. 2 was under no warrant of law to file an affidavit about it. The High Court has observed that not only the arbitrator's record does not bear that the contention that paper No. 104/37-Kha was on agreed valuation list but even Party No. 2 which gave this list to the arbitrator on 21-7- 1966 does not affirm the assertion on affidavit in spite of a square challenge thrown by Party No. 6.

36. In our opinion the question as to whether paper No. 103/37-Kha was filed by Party No. 2 at the request of all the parties is not significant. What is material is that the said paper which gives a valuation of all the 17 immovable properties bears the signatures of all the six parties. The signatures on a statement filed during the course of proceedings before the arbitrator have a different significance than signatures below the record of proceedings before the arbitrator. It has not been shown that there were other documents filed 'before the arbitrator by a party which contained the signatures of other parties in token of their having noted the contents thereof. We, therefore, find it difficult to construe the signatures of the other parties at the bottom of paper No. 104/37-Kha as being appended in token of their having noted the contents thereof. Furthermore none of the parties produced any evidence before the arbitrator to prove the valuation of the properties. In the circumstances the arbitrator could treat the valuation given in the said paper as the agreed valuation given by all the parties. The controversy which arose subsequently before the trial court between Party No. 2 and Party No. 6 regarding paper No. 104/37-Kha, to which reference has been made by the High Court, can have no bearing on the question whether the arbitrator has committed an error in proceeding on the basis that paper No. 104/37-Kha submitted before him bearing the signatures of all the six parties is an agreed valuation of the properties. The said paper was filed on 21-7-1966 and prior to that on 16-7-1966 the arbitrator bid discussed with all the parties the municipal assessment and valuation of all the joint family properties for the purpose of stamp duty. The arbitrator could, therefore, assume that paper No. 104/37-Kha was being filed in pursuance of the said discussion. Moreover, there is nothing on the record to show that any of the parties had raised any objection that the valuation fixed in respect of the properties in the said paper was not correct. The arbitrator could, in the circumstances, proceed on the basis that the valuation of the properties was as indicated in paper No. 104/37-Kha.

37. The High Court has held that the valuation given by in paper No. 104/37-Kha is not correct for the reasons that (i) several immovable properties which were not subject to municipal assessment are shown as having municipal assessment or annual letting value; (ii) the municipal assessment in

respect of some of the properties which were subject to municipal assessment was incorrectly specified and the valuation was based on that incorrect specification; and (iii) a uniform principle of valuation has been applied for tenanted buildings subject to rent control as well as self occupied buildings and even open lands.

38. In support of the first reason given by the High Court, Shri Sanghi has pointed out that certain properties, namely, Stable with land and Khandhal situated in Lucknow, Matadin House in Lucknow, and Badri Batika, though not assessable to municipal taxes have been valued by the arbitrator in the award on the basis of Lucknow Corporation rental value. We find that the valuation that has been placed by the arbitrator for the aforementioned properties is the same as is set out in paper No. 104/37-Kha and the arbitrator appears to have notionally fixed the corporation rental value by dividing the market value of the property as stated in the said paper by 20 because in respect of other properties the valuation had been fixed by multiplying the annual rental value by 20 to arrive at the market value. The fixation of the notional rental value in respect of these three properties is of little consequence because the market value that has been assessed by the arbitrator for these properties is the same as indicated in paper No. 104/37Kha.

39. As regards certain other properties, viz., the Mill Area Property at 7 Lucknow, Singharewali Kothi at Lucknow and Glenroy at Mussoorie it has been pointed out that in paper No. 104/37-Kha the valuation has been fixed on the basis of incorrect municipal assessments and to prove the correct assessments for these properties certified copies of the assessment list were filed before the trial court as Exhibits 11, 10 and 12. The High Court has held that these certified copies of the assessment list could be produced before the trial court because the municipal assessment statements which were submitted by Party No. 1 before the arbitrator on 27-7-1966 had been taken away by the said party on 28-7-1966 for getting them typed and the same were not filed again before the arbitrator. In adopting this course the High Court has assumed, without any evidence on record, that the certified copies of the assessment list which have been filed as Exhibits 11, 10 and 12 before the trial court are the copies of the documents which had been filed by Party No. 1 before the arbitrator on 27-7-1966 and which were taken back by him on 28-7-1966. Moreover if any party had any grievance against Party No. 1 having taken back the municipal assessment statements which were produced by him on 27-7-1966 before the arbitrator, the said party could have either moved the arbitrator for directing Party No. 1 to produce the same or could have filed the said statements itself before the arbitrator. None of the parties chose to adopt such a course. The only evidence that was adduced before the arbitrator regarding the municipal assessment of the properties was that stated in paper No. 104/37-Kha. The award based on the said evidence cannot be assailed on the basis of additional evidence in the form of certified copies of the municipal assessment statements produced before the trial court, which evidence was not produced before the arbitrator.

40. As regards the application of the same principle of capitalisation of annual profits to all the properties irrespective of the fact that some are tenanted buildings subject to rent control and others are self-occupied buildings and even open land we find that the said principle was adopted in arriving at the valuation of properties in paper No. 104/37-Kha. In applying the said principle the arbitrator appears to have proceeded on the basis that the said principle was acceptable to the parties in respect of all the properties.

41. We are, therefore, unable to hold that in the matter of immovable properties the award suffers from an error on the face of it.

42. The High Court has held that the considerable items of movables on the face of the award have been omitted from division and as a result the parties who were respectively in actual possession or enjoyment thereof have been allowed to retain undue advantage inasmuch as no adjustment has been made in respect thereof from their shares while making the allotments. In this regard, it may be stated that the law is well settled that unless so specifically required an award need not formally express the decision of the arbitrator on each matter of difference and unless the contrary appears the court will presume that the award disposes finally of all matters of difference. (See : Santa Sila Devi v. Dhirendra Nath Sen 12.) In the award the arbitrator has stated:

> "I have heard the parties and considered all the points raised by them, the rights and claims of the parties involved, and the accounts and evidence produced by them." The arbitrator has also made the following provision in the share of the movable properties allotted to each of the parties: "Subject to the terms of the award Party No. ... will get 1/6 share in all the joint family property which may be recovered or traced or available for partition subsequently and it will be distributed after the award."

This would show that in respect of the movable properties referred to in the award the arbitrator has made the allotment amongst all the six parties in respect of properties which may be recovered or traced or become available for partition subsequently and the arbitrator has directed that each party shall get 1/6 share in the same. This would show that the arbitrator has fully considered all the claims of the parties in respect of all the properties available for partition and it cannot be said that any property has been left out by the arbitrator.

43. The High Court has also observed that the arbitrator has failed to decide the disputes about advances taken from the joint family funds by the parties respectively and to make adjustments in respect thereof in the award as required to do by the arbitration agreement. It is no doubt true that in clause 9 of the arbitration agreement it is provided that if there be any disagreement on any figure of the advance between Bhupendra Nath Srivastava and the party concerned, the same shall be decided by the arbitrator and his decision will be binding and final on the parties concerned. From the proceedings of the arbitrator it does appear that the matter of advances has been considered by the arbitrator. The fact that the arbitrator has not separately indicated in the award the amount of advance in respect of each of the parties does not mean that he did not determine the dispute relating to advances. The arbitrator, after considering the amount of advances, has fixed the shares of each of the parties in the award. In other wards, the arbitrator has made a lump sum award for each of the parties. It was permissible for the arbitrator to deliver a consolidated award on the whole case. (See: Santa Sila Devi v. Dhirendra Nath Sen 12.)

44. The High Court also found fault with the award on the ground that the value of the shares allotted to the parties is unequal. But this was bound to happen on account of difference in the amounts of advance to each of the parties which had to be adjusted against the shares allotted. It cannot, therefore, be said that the value of the share allotted to each of the parties under the award

is unequal. Moreover, the award cannot be set aside on the ground that the shares allotted are unequal. In B. Subbarama Naidu v. B. Siddamma Naidu13, this Court has rejected the contention that the arbitrator 13 (1962) 1 SCR 784 : AIR 1962 SC 671 erred in allotting less than half the share in the properties in suit and has observed:

> "Plainly this objection would not fall either under clause (a) or under clause (b) nor under the first part of clause (c). The question is whether it could possibly fall within the second part of clause (c), that is, whether the award is 'otherwise invalid'. In order to bring the objection within this clause learned counsel contended that the award was bad on its face. It is difficult for us to appreciate how the award could be said to be bad on its face. When a dispute is referred to arbitration, the arbitrator has to decide it to the best of his judgment, of course acting honestly."

45. Another infirmity in the impugned award, according to the High Court, was that the worship of the family deity and control over immovables attached thereto have been illegally allotted to the share of one party alone. Under the award family Deviji with that and other articles is to be maintained by Party No. 2. The High Court has held that as the arbitration agreement did not make any mention of the family deity, the assets attached to same should have been kept under joint control or been left out of the partition scheme altogether. We find it difficult to appreciate as to how the award can be faulted on this score. Since the family deity is kept in one of the immovable properties which had to be allotted to one of the parties, the maintenance of the family deity had to be entrusted to the party who was allotted that particular property. The arbitrator thought it proper to allot the said property to Party No. 2 representing the branch of Bhagwati Nath, the eldest son of late Shri B.N. Srivastava, and thereby Smt Savitri Devi, wife of Bhagwati Nath, the eldest daughter-in- law of late B.N. Srivastava has been entrusted with the maintenance of the family deity. Moreover, as mentioned by the trial court, in the affidavit dated 5-1-1972, Party No. 2 had specifically admitted that right of worship is available to all the parties.

46. Before we conclude we may mention that the award has been acted upon by the parties to a considerable extent in the sense that during the pendency of the proceedings in court the objectors (Parties No. 3 and 6) as well as other parties have alienated a number of properties which have been allotted to their share under the award. Some of the sale deeds or agreements for sale were executed by Respondent 14 claiming full ownership on the basis of the impugned award. This is an additional circumstance which persuades us to hold that the award made by the arbitrator should be maintained and should not be upset.

47. The appeal is, therefore, allowed. The judgment of the High Court is set aside and the judgment of the Additional District & Sessions Judge for making the award the rule of the court is restored. The parties are left to bear their own costs..