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

**COMMERCIAL ARBITRATION PETITION NO. 19 OF 2015**

Shamshul Ishrar Khan ...Petitioner

***Versus***

Alka Chandewar ...Respondent

**WITH**

**CONTEMPT PETITION NO. 102 OF 2015  
(CIVIL APPELLATE JURISDICTION)**

Alka Chandewar ...Petitioner

***Versus***

Shamshul Ishrar Khan ...Respondent

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**Mr. Harinder Toor** a/w Mr. Sandeep Parikh, Ms. Sabreen Siddiqui, Ms. Pooja Jaiswal i/b Mr. A. C. Mahimkar, for Petitioner in CARBP No.19/2015 and for the Respondent in CP No.102/2015.

**Mr. J.P. Sen, Senior Advocate** a/w Mr. Sameer Bhalekar, for the Respondent in CARBP No.19/2015 and for the Petitioner in CP No.102/2015.

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**CORAM : SOMASEKHAR SUNDARESAN, J.**

**RESERVED ON : MARCH 11, 2026**

**PRONOUNCED ON : APRIL 2, 2026.**

**JUDGEMENT :**

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**Context and Factual Background:**

1. Commercial Arbitration Petition No. 19 of 2015 is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), impugning an Arbitral Award dated March 7, 2015, passed by the Learned Arbitral Tribunal (***“Impugned Award”***), holding that the Respondent, Alka Chandewar (***“Alka”***), is a partner in a partnership firm named M/s Saras Developers (***“Saras Developers”***), with an 80% share in Saras Developers, and directing the Petitioner, Shamshul Ishrar Khan (***“Khan”***) to pay Alka a sum of Rs. 7,39,72,584, which is an amount computed as Alka’s share on dissolution of Saras Developers, along with interest at the rate of 10% per annum, from the date of filing of the reference till the date of the arbitral award and thereafter until realisation.

2. Khan challenges the Impugned Award on two fundamental grounds, namely; that Alka's claim was barred by limitation, and that the quantification of Alka's share in the proceeds of dissolution of Saras Developers is grossly incorrect to a degree that renders the Impugned Award perverse.

3. The factual matrix that is relevant for the purpose of adjudicating this Petition may be summarised thus :-

A) Saras Developers was constituted under a Partnership Deed dated May 15, 1990 (***Partnership Deed***). The Partnership Deed was amended and restated from time to time and the last available executed Partnership Deed forming part of the record is dated October 22, 1997, which would indicate that Alka and Khan were partners in Saras Developers with Alka holding an 80% share and Khan holding a 20% share;

B) Saras Developers was engaged in the business of construction and land development. Land bearing CTS Nos. 558 and 558/1 to 558/18, admeasuring an aggregate of approximately 3936 square metres, situated in Malad, constituted Saras Developers' property. This property was called ***Gambers Estate***.

C) Alka and her then husband Mr. Sovind Chandewar (***Sovind***), carried out business in the form of a Partnership Firm called M/s Saraswati Developers (***Saraswati Developers***). The property of Saraswati Developers was essentially another parcel of land, and the building standing thereon, also situated in Malad, in which the business of Hotel Kuber Palace was carried out;

D) Various disputes arose between Alka and Sovind in relation to Saraswati Developers, which are ancillary to the disputes between Alka and Khan in relation to Saras Developers, which forms subject matter of the captioned proceedings;

E) Initially, on May 15, 1990, a Partnership Deed was executed in relation to Saras Developers, among one Mr. Sushil Kumar Chamaria (“**Chamaria**”), Alka, one Mr. Ramesh Gopal Chandewar (“**Ramesh**”), one Mr. Krushnarao Lahuji Nirwan (“**Nirwan**”) and Khan. This partnership intended to carry on the business of property development in the name and form of Saras Developers. Each partner had a 20% share. Nirwan was Alka’s father, while Ramesh was Alka’s nephew, but from Sovind’s side of the family;

F) Saras Developers purchased the land known as Gammers Estate, referred to above between April 10, 1991 and October 12, 1993. On January 06, 1994, Alka, Nirwan and Ramesh executed a power of attorney constituting Alka's husband Sovind as an attorney to represent them in the day-to-day conduct of business by Saras Developers;

G) The Partnership Deed was modified from time to time, and in particular on April 30, 1995, when Chamaria was expelled from Saras Developers. Alka's share rose to 30%, the share of Ramesh and Nirwan rose to 25% each, while Khan's share remained at 20%;

H) Between 1994 and 1997, a building by the name "Sarala Sadan," having seven storeys, was completed by Saras Developers, and it is contended by Khan that most of the flats in Sarala Sadan had been sold between 1994 and 2001;

I) On September 02, 1997, Nirwan passed away, and on October 22, 1997, Ramesh retired as a partner of Saras Developers. Consequently, another deed was executed among the parties on October 22, 1997, and by this time the partnership firm came to comprise only Alka, with a partnership share of 80%, and Khan, with a partnership share of 20%. Save and except for the modification of the profit-sharing ratio, the existing terms of the earlier Partnership Deed were continued without being disturbed;

J) It is contended by Khan that no further construction or development on Gambers Estate was carried out by Saras

Developers between 1997 and 2002. Meanwhile, sometime in 2000, discord emerged between Alka and Sovind;

K) On June 19, 2002 (“**First 2002 Deed**”), a new partnership deed is purported to have been executed in relation to Saras Developers, with Alka’s share being diluted to 75%; Khan remaining at 20% and one Mr. Siddharth Vinod Bathia (“**Bathia**”), acquiring a share of 5%. Shortly thereafter, on June 27, 2002, a Supplemental Deed of Partnership (“**Second 2002 Deed**”) was purportedly executed between the parties by which the shares were significantly restructured, with Alka’s stake coming down to 34%, Khan's stake going up to 33% and Bathia’s stake rising to 33%. This Second 2002 Deed recorded the agreement of the partners to acquire and utilize Transferable Development Rights (“**TDR**”) to further develop and construct buildings on Gambers Estate;

L) On January 19, 2003, the Partnership Deed was purported to have been further reconstituted (“**2003 Deed**”), this time around, Alka’s stake falling to 25%; Khan’s stake rising to 33.33%; Bathia’s stake increasing to 33.33%; and Sovind acquiring a stake of 8.34%;

M) On February 17, 2003, Saras Developers wrote to the Registrar of Firms through one Mr. Haresh Shah, its Chartered Accountant, seeking a change in the constitution of Saras Developers. By this letter, the Registrar of Firms was requested to note that Bathia had joined Saras Developers as a new partner with effect from April 25, 2002;

N) Very shortly after the 2003 Deed, a Deed of Retirement dated February 19, 2003 (“**Retirement Deed**”), is purported to have been executed, by which Alka is said to have retired from Saras Developers, with Khan, Bathia and Sovind each having a one-third share, i.e. 33.33%, in Saras Developers. It is claimed that a letter dated April 28, 2003 was issued by the same Mr. Haresh Shah to the Registrar of Firms requesting it to note that Sovind had joined Saras Developers as a new partner with effect from January 19, 2003, and that Alka had retired from Saras Developers with effect from February 19, 2003;

O) The Registrar of Firms wrote to Saras Developers, indicating a discrepancy in the address and signature of Alka in the documents submitted on behalf of Saras Developers through Mr. Haresh Shah. This was communicated by letters

dated April 07, 2003 and June 19, 2003 – in reasonable proximity to the 2003 Deed and the Retirement Deed;

P) About two years later, on May 03, 2005, Alka issued a legal notice to Sovind, stating that the power of attorney dated January 06, 1994, which had been executed in favour of Sovind, stood revoked;

Q) Meanwhile, between 2003 and 2006, construction took place on Gambers Estate, and a building named Dr. Gambers Residency, comprising Wings “B” and “C,” each having seven floors, was completed. Most of the flats in this building are claimed to have been sold by Saras Developers between 2004 and 2006;

R) On November 30, 2005, Sovind filed a Divorce Petition in the Family Court against Alka;

S) Between 2005 and 2009, further construction of Dr. Gambers Residency, namely Wing “A” having ten storeys, was also completed by Saras Developers. It is claimed by Khan that most of the flats in this building, i.e. Wing “A,” had been booked for sale in advance by Saras Developers between 2005 and 2006;

T) On April 24, 2008, Alka (who contends that she had no notice of the deeds executed in 2002 and 2003 including the Retirement Deed) issued a notice through her Advocates, dissolving Saras Developers as a partnership firm (“**Dissolution Notice**”) and invoking the arbitration clause contained in the Partnership Deed dated May 15, 1990 and the modified Partnership Deed dated April 30, 1995. Several disputes that had arisen between the parties were sought to be referred to arbitration;

U) By an order dated September 22, 2008, two Arbitration Petitions filed by Alka seeking interim protection pending arbitration under Section 9 of the Act, came to be disposed of. Arbitration Petition No. 275 of 2008 filed by Alka against Sovind in connection with Saraswati Developers was dismissed, while Arbitration Petition No. 276 of 2008, filed against Khan in connection with Saras Developers was also disposed of;

V) On October 24, 2008, the Family Court dissolved the marriage between Sovind and Alka by granting a decree of divorce;

W) On June 22, 2009, a Learned Division Bench of this Court allowed the withdrawal of an appeal filed by Alka against the dismissal of the Section 9 Petition but mediation was recommended in the said order;

X) Thereafter, an Application under Section 11 was filed by Alka for appointment of an Arbitral Tribunal and this led to constitution of the Learned Arbitral Tribunal, which eventually passed the Impugned Award.

4. In the arbitration proceedings, Alka had essentially sought a declaration that the First 2002 Deed, the Second 2002 Deed, the 2003 Deed and the Retirement Deed were forged, fabricated, null and void and not binding on Alka. It was also prayed that the Learned Arbitral Tribunal declare that the partnership firm of Saras Developers stood dissolved with effect from April 24, 2008, pursuant to the Dissolution Notice. A further relief for payment of Rs.~28.39 crores, representing an 80% share in the profits of Saras Developers, along with interest at the rate of 10% per annum from the date of filing of the claim until realisation was also sought by Alka.

5. Pleadings were completed, issues were framed, and evidence was led by Alka and Khan in the form of affidavits along with

compilations of documents. On October 01, 2013, the Learned Sole Arbitrator appointed by this Court recused himself in the arbitration proceedings relating to Saraswati Developers, pursuant to a challenge to his independence and impartiality filed by Sovind. The same arbitrator had also been appointed as Sole Arbitrator in connection with disputes and differences relating to Saras Developers. Khan too filed an application on June 23, 2014 calling upon the Learned Sole Arbitrator to recuse from the arbitration relating to disputes connected to Saras Developers.

6. After filing such application, Khan refrained from attending the arbitration proceedings any further. Khan's application seeking recusal was dismissed by the Learned Sole Arbitrator approximately six months later, on December 8, 2014. Considering that Khan simply went missing and refrained from participating in the arbitration proceedings, the Learned Sole Arbitrator had to deal with the proceedings and consider the material before him without any assistance or participation on the part of Khan to arrive at an assessment of the matter.

7. Alka obtained various documents utilizing her rights under the provisions of Right to Information Act, 2005 ("**RTI Act**") and referred to and relied on the Income Tax Returns filed by Saras Developers obtained through such process. The Learned Sole Arbitrator,

therefore, interpreted such documents, and these indicated that Alka was a partner of Saras Developers until Assessment Year 2003-04.

8. While the Learned Arbitral Tribunal framed 13 points for determination and dealt with the same, for purposes of adjudicating this Section 34 Petition, the Petitioner presses into service his grievances on three counts. These are the findings that Alka's claim was not barred by limitation; that Alka continued to be a partner right until the date of the Dissolution Notice; and that Alka was entitled to a sum of Rs.~7.39 crores, in view of her 80% share in the partnership of Saras Developers.

**Hearing in the Matter:**

9. It is in this context that I have heard Mr. Harinder Toor, Learned Advocate on behalf of Khan, Mr. J. P. Sen, Learned Senior Advocate on behalf of Alka. With their assistance, I have examined the material on record.

10. The matter was heard last year. Owing to efflux of time, the matter was released and listed afresh for further hearing on March 11, 2026. With the assistance of Learned Advocates, the submissions and further clarifications provided by them were taken on board, and the matter was reserved afresh for Judgement.

**Khan's Submissions:**

11. Mr. Toor, Learned Advocate on behalf of Khan would essentially attack the finding in the Impugned Award in respect of Alka's continued partnership until the Dissolution Notice, and the amounts held to be payable by Khan to Alka in respect of her share in Saras Developers. Mr. Toor would point out that after examining the annexures to the statement of claim and the particulars set out therein, as indeed the documents procured pursuant to an application made under the RTI Act, including the Income-tax returns, the Learned Arbitral Tribunal has arrived at a view that the receipts of Saras Developers from the sale of units developed by Saras Developers stood admitted by Khan, inasmuch as Khan had stated in his Written Statement dated August 30, 2010 that the receipts of Saras Developers from sales is a matter of record.

12. Mr. Toor would point out that based on the aforesaid conclusions, the Learned Arbitral Tribunal proceeded to compute Alka's share of benefits from Saras Developers. Towards this end, the cost of construction for Sarla Sadan and Gambers Residency Wings "B" and "C" has been taken at 20%, while for Gambers Residency Wing "A," the cost has been taken at 30%. The Learned Arbitral Tribunal thereafter adopted a uniform deduction of 30% towards cost of construction in

respect of all three buildings. The total sale consideration for the three buildings, namely Sarla Sadan and Gambers Residency Wings “A,” “B” and “C,” has been computed by the Learned Arbitral Tribunal at Rs. 13.20 crores, from which a 30% deduction towards cost has been effected, bringing the figure to Rs. 9.24 crores, which has been assessed as the profit earned by Saras Developers. On such profit, Alka's 80% share has been computed at Rs. 7.39 crores, which is the amount awarded, along with interest at the rate of 10% per annum from August 30, 2010 until the date of the Award and thereafter until realisation at the same rate.

13. Mr. Toor would submit that the aforesaid findings are vitiated by patent illegality and perversity. He would submit that the patent illegality is writ large on the face of the Impugned Award, while the perversity is borne out by the ignoring vital evidence in arriving at the aforesaid decision. To substantiate the aforesaid contentions, Mr. Toor would submit that the Income Tax Returns of Saras Developers had indeed been available to the Learned Arbitral Tribunal. These had been procured by Alka through the RTI Act and had been brought on record before the Learned Arbitral Tribunal.

14. Yet, Mr. Toor would contend, the vital evidence in the form of the computation and settlement of accounts of the partnership firm as

evidenced in the Income-tax returns, were not relied upon by the Learned Arbitral Tribunal. The failure to rely on the data contained in such Income-tax returns is assailed by Mr. Toor as being egregiously perverse, despite being available as evidentiary material brought on record by Alka herself.

15. The interpretation of Khan's Written Statement dated August 30, 2010 and the Additional Written Statement dated October 26, 2010 is also assailed by Mr. Toor on the premise that, while Khan had categorically denied Alka's allegations as made in the Statement of Claim, the Learned Arbitral Tribunal had ignored vital elements in both the Written Statements filed by Khan. Pointing to the contents of Khan's statements, Mr. Toor would submit that Khan had clarified that after the financial year 1993–94, Saras Developers had regularly paid and reflected the profit and remuneration to all the partners, including Alka, as per the ratio of their respective shares. He would submit that such payment of the respective shares would also be borne out by the Income Tax Returns.

16. Mr. Toor would submit that Khan had explicitly reiterated that Alka's allegation of being deprived of her share of profits was totally incorrect and baseless. On the contrary, Khan is said to have clarified that the books of Saras Developers had been destroyed during the

unprecedented volume of rainfall on July 26, 2005 and July 27, 2005, and that a police complaint had been lodged to this effect on August 03, 2005. This is presented as another facet of vital evidence having been ignored.

17. Moreover, the other piece of vital evidence allegedly ignored by the Learned Arbitral Tribunal is Clause 2 of the undisputed Deed of Retirement dated October 22, 1997, documenting the retirement of Ramesh, which stated that accounts of Saras Developers had been mutually made up and settled by the parties until that date. Therefore, he would submit that the ignoring of this vital piece of evidence too would vitiate the Impugned Award.

18. Mr. Toor would contend that, when one examines the dissolution of a partnership firm, one must apply the provisions of Section 48 read with Section 11 of the Indian Partnership Act, 1932. The failure and neglect to apply these provisions would indicate, according to Mr. Toor, that the Impugned Award is in direct conflict with applicable statutory provisions, which are mandatory and indispensable, thereby rendering the Impugned Award utterly illegal and incapable of being sustained.

19. Mr. Toor would also point to an additional affidavit of Khan filed on April 30, 2011, which indeed contained information on the expenditure of Saras Developers incurred in the rehabilitation of existing tenants and occupants, purchase of TDR, etc. Therefore, he would submit that this vital evidentiary material, which would demonstrate how the data contained in Exhibits TT, UU and VV could not have been ignored, shows that the Impugned Award is perverse, because it simply takes the total receipt of consideration from the proceeds of sale of all three buildings. This, according to him, would demonstrate that the computation is, on the face of it, contrary to these very Exhibits and, therefore, the findings returned are not reasoned or substantiated, thereby attracting the vice of patent illegality and perversity.

20. Mr. Toor also finds fault with the Learned Arbitral Tribunal having failed to factor in that Alka's share between December 03, 1992 and April 30, 1995 was only 20% and that her share between April 30, 1995 and October 22, 1997 was only 30%. These facets ought to have been worked out in detail by the Learned Arbitral Tribunal, if it was planning to work out the dissolution mechanism to ascertain the benefits that were claimed by Alka and have been found to be payable to her by the Learned Arbitral Tribunal.

21. Finally, Mr. Toor would also submit that the Learned Arbitral Tribunal blatantly disregarded the vital evidence that Alka was fully aware of the conduct of the partnership business and that she had appropriated the assets of the partnership business. The entries at Sr. No. 27 and 33 in Exhibit TT, about allotment and transfer of flats 601 and 701 on December 16, 1999 in Sarala Sadan, would clearly show that Alka was one of the signatories regarding the sale of the said flat. The full cause title to the statement of claim filed by Alka describes Alka to be residing at Flat No. 601 and 701 of Sarala Sadan. Therefore, failing to factor in the value of flats 601 and 701 which had been appropriated by Alka would also point to the Learned Arbitral Tribunal having blatantly ignored vital evidence that would be necessary in the computation of benefits that the Learned Arbitral Tribunal has chosen to make.

22. As regards the claim being barred by limitation, Mr. Toor would submit that the findings in the Impugned Award are untenable again on the count of being initiated by patent illegality and for ignoring vital evidence. According to him, the Learned Arbitral Tribunal has adjudicated the issue of limitation on the basis of the consent order dated June 18, 2010 by which reference was made to arbitration rather than by reference to substantive claims made by Alka as set out in Exhibits TT, UU, VV and XX appended to the Statement of Claim. The

provisions of Section 43 of the Act read with Section 3 of the Limitation Act, according to Mr. Toor, ought to have been applied by the Learned Arbitral Tribunal. In this context, he would submit that Khan had categorically pleaded in the Written Statement that Alka's claim was hopelessly barred by the law of limitation and this had in fact been appreciated by the Order dated September 22, 2008 by which this Court had dismissed the two Arbitration Petitions filed by Alka under Section 9 of the Act. This order, rejecting the Section 9 Petitions, had explicitly noted that the Petitions were liable to be dismissed on the ground of delay and laches.

23. Applying the contention of Alka's claims being barred by limitation to the facts of the case, Mr. Toor would make a further contention that the arbitration proceedings commenced on April 24, 2008, since arbitration was invoked on that date. Therefore, he would submit that any claim that could be made as of that date and being capable of being ruled upon by the Learned Arbitral Tribunal ought to have been restricted to the three preceding years, namely April 24, 2005 to April 24, 2008. In sharp contrast, the contents of Exhibits TT and UU would indicate that Alka has claimed a share in the purported sale proceeds of flats sold and registered during the entire period ranging from 1994 to 2005.

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**Alka's Submissions:**

24. In sharp contrast, Mr. J. P. Sen, Learned Senior Advocate appearing on behalf of Alka, would submit that the Learned Arbitral Tribunal has returned considered findings upon evaluating the evidence available on record. By withdrawing from the arbitration proceedings and simply refraining from participating therein, Khan had adopted a “catch me if you can” approach, which would point to the basis of the Learned Arbitral Tribunal drawing an adverse inference from the conduct of Khan, which had substantially increased the burden upon the Learned Arbitrator of interpreting the documentary material placed before the Tribunal.

25. Mr. Sen would submit that the last admitted position in relation to the constitution of the partnership was reflected in the Partnership Deed dated October 22, 1997, which unequivocally recorded Alka's 80% share in Saras Developers, and that this position has been rightly held to have continued without being altered lawfully. He would further submit that Alka and Sovind, between whom matrimonial disputes arose around 2005, have themselves yielded contemporaneous documentary material in the form of pleadings and correspondence exchanged between them. In this regard, Mr. Sen would contend that reliance was rightly placed on a letter dated May 16, 2005, addressed by

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Sovind to Alka, wherein it was asserted that Alka had retired from Saras Developers, which, according to Mr. Sen, would itself demonstrate that the question of Alka's alleged retirement was a matter of dispute and could not be treated as an admitted or concluded position.

26. Mr. Sen would submit that Application under the RTI Act was taken out primarily on July 4, 2005, which led to the Registrar of Firms providing various documents pertaining to the composition and ownership of Saras Developers. It is at this stage, Mr. Sen would contend, that the alleged First 2002 Deed, the Second 2002 Deed, the 2003 Deed and the Retirement Deed came to her knowledge. While these documents were purportedly filed with the Registrar of Firms, evidently there was no entry in respect of such deeds found in the Register of the Registrar of Firms. These deeds, purport to bear signatures of Alka which were found to have been forged upon fair appreciation of evidence.

27. Mr. Sen would submit that Alka took various steps in this regard including the filing of police complaints and seeking interlocutory relief under Section 9 of the Act. While the Arbitration Petition came to be withdrawn on April 24, 2008, on the very same date, Alka issued the Dissolution Notice, thereby dissolving Saras Developers and also invoking the arbitration clause in the Partnership

Deed dated October 22, 1997, which is the last admitted document in respect of the ownership and charter of Saras Developers. Mr. Sen would point out that the Learned Arbitral Tribunal came be constituted by appointment of a retired High Court Judge as a Sole Arbitrator on June 18, 2010. However, after participating in the proceedings for four years, Khan suddenly demanded that the Learned Arbitral Tribunal recuse from the matter. This was fairly and correctly rejected by the Learned Arbitral Tribunal, Mr. Sen would contend, also pointing out that immediately after filing the application seeking recusal, Khan simply stayed away from the arbitration proceedings and refrained from participating any further.

28. Such act of staying away, Mr. Sen would submit, was deliberate and wilful to frustrate and make it very difficult for the arbitration proceedings to be conducted, evidently hoping that such an approach would lead to some errors or shortcomings, which could then be used to challenge the final adjudication if the outcome were adverse to Khan.

29. On the facet of limitation, Mr. Sen would submit that the very contention is vague and ambiguous. It is contended that the claim is one of dissolution of Saras Developers and for rendering of accounts of Saras Developers. Such a claim is squarely governed by Article 5 of the

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Limitation Act, which provides for a period of limitation of three years running from the Dissolution Date. Mr. Sen would submit that the invocation of arbitration was well within time and related to rendering of accounts and the financial statements including the balance sheet, which are running accounts of the Saras Developers. Therefore, the claim of limitation is unsustainable, he would contend, also pointing to the grounds of challenge to the Impugned Award to contend that the Learned Arbitral Tribunal has fairly and accurately returned findings of forgery and fabrication of the intermittent Partnership Deeds after the last admitted Partnership Deed alluded to by Alka.

30. The purported and fake dissipation of Alka's partnership interests by diluting first to one third and below and eventually retiring are untenable, Mr. Sen would contend, since evidently, she had not executed any of these deeds. Therefore, Mr. Sen would contend that the Learned Arbitral Tribunal has been reasonable in appreciating evidence to hold that Alka had not retired, and owing to the wanton attempt at frustration of the proceedings, the Learned Arbitral Tribunal made best judgement assessment of Saras Developers' financials, from the material available on record and applied itself to examination of the data relating to the sales turnover, discounting it significantly by a factor of

construction cost, to arrive at the conclusion as to what her share would be.

31. Mr. Khan not having participated in the arbitration proceedings, Mr. Sen would submit the Learned Arbitral Tribunal justifiably addressed itself to the period between the commencement of arbitration proceedings i.e. the invocation of arbitration and the date of appointment of the Learned Arbitral Tribunal. No objection had been raised in this regard and Khan ceased to participate after four years of participation, and yet, the ambiguous and incoherent contention on the ground of limitation has been squarely addressed in the Impugned Award.

32. The other contention raised on behalf of Khan, namely that the Learned Arbitral Tribunal could not have granted direction to release any payment in respect of any amounts preceding the period prior to three years before the Dissolution Date, Mr. Sen would point out, was never urged before the Learned Arbitral Tribunal. Mr. Sen would also point out that no such contention has been raised even in the Section 34 Petition. Therefore, he would submit that this is an entirely new objection that has been conjured up on the run on behalf of Khan and that in any case the objection is devoid of merit.

33. According to Mr. Sen, until Saras Developers is actually dissolved and accounts are finalized, a partner in a partnership firm is neither a creditor nor a debtor. On the contrary, he would submit the partner is an owner of the partnership business and therefore, there is no question of suing for any amounts during the subsistence of the partnership prior to the Dissolution Date. On dissolution, Mr. Sen would submit the partner is entitled to the amounts in his capital account which should be dependent on the taking of accounts. Therefore, in the absence of the accounts of the partnership being presented to the Learned Arbitral Tribunal, the Learned Arbitral Tribunal has had to simply factor in all the aggregate turnover, provide for expenses however old they may be and has come up with a best estimate and assessment of Alka's entitlement. Mr. Sen would submit that Khan's absence has resulted in Alka being under-compensated.

34. Alka's assertion that no amounts had been received by her ever from the business of Saras Developers has not even been contradicted or even attempted to be disproved by Khan in the course of the arbitral proceedings. Therefore, Mr. Sen would submit that the Learned Arbitral Tribunal was duly entitled to take into account all the sales effected by Saras Developers and linking Alka's entitlement to the three years before the Dissolution Date is not at all reasonable.

35. Addressing the contentions about the manner of quantification of the claims, Mr. Sen would submit that the business of Saras Developers comprised construction of units in three buildings and the proceeds of sale from such units. These buildings namely Sarla Sadan, Gambers Residency 'B' and 'C' wings, (one building) and Gambers Residency 'A' wing bracket (another building) were duly constructed and units in them were actually sold to realise actual proceeds. Despite being directed to furnish for inspection and produce the audited financial statements including the profit and loss account and the balance sheets of Saras Developers, Khan singularly failed to do so and in fact refrained from doing so. If Khan simply did not provide the relevant material that would lead to adjudication of these proceedings, Khan has forfeited the right to find fault with a best judgement assessment being made by the Learned Arbitral Tribunal.

36. Mr. Sen would submit that the only material that the Learned Arbitral Tribunal was constrained to deal with were the registered sale deeds to the premises in the three buildings. At the time of filing of the Statement of Claim the sale of units in Sarla Sadan and Gambers Residency 'B' and 'C' Wings had been completed. Exhibits TT and UU annexed to the Statement of Claim, specifically, summarise and record the price disclosed in the registered agreements for sale entered into in

respect of each of the premises in these buildings. Thereby, it is evident that 34 flats in Sarla Sadan led to an aggregate value of Rs.~1.84 crores and 33 flats in Gambers Residency 'B' and 'C' Wings put together aggregated to Rs.~5.22 crores.

37. The sale of premises in Gambers Residency 'A' wing was still in progress at the time of filing of the proceedings. Therefore, Mr. Sen would submit, Alka was able to pursue only a fraction of the real revenues of Saras Developers and owing to the non-cooperative and subversive attitude adopted by Khan in the arbitral proceedings, arguably, Alka has been under compensated by a wide margin, and therefore the Section 34 Court ought not to pay much heed to the submissions being made on behalf of Khan on the manner of computation, which essentially seeks to question the appreciation of evidence by the Learned Arbitral Tribunal.

38. In the course of the arbitration and pursuant to an order dated October 7, 2010, passed by the Learned Arbitral Tribunal, Khan had submitted a list disclosing consideration received in respect of Gambers Residency 'A' wing. This disclosure admittedly indicated sale consideration of Rs.~6.13 crores. It is precisely this amount presented by none other than Khan that has been factored in by the Learned Arbitral Tribunal to hold that a total consideration of Rs.~13.20 crores

had been received from the sale of premises in that building. The number of flats sold in Sarla Sadan (34) and in Gambers Residency B and C Wing (33) would indicate that the total flats sold were 67 in number at the time of filing the Statement of Claim. Gambers Residency A Wing had 29 flats. To contend that the sale of all these flats would yield a mere Rs.~13 crores in revenues is an extraordinary understatement, Mr. Sen would submit.

39. Mr. Sen would submit that even from such evidently understated sales turnover, the Learned Arbitral Tribunal went on to further reduce 30% towards cost of construction to arrive at a really under-evaluated profit of Rs.~9.24 crores for the entire project in question and on that, the Learned Arbitral Tribunal computed an 80% share at Rs.~7.39 crores in Alka's favour. Mr. Sen would allude to potential receipts of cash that may have been involved in disposal of Saras Developer's assets, since it is entirely unlikely that 96 apartments could have been sold for a meagre sum of Rs.~13.20 crores.

40. As regards interest, Mr. Sen would submit that a partner's entitlement to payouts should ideally entail interest from the Dissolution Date because that is the date on which the entitlements are drawn up, with accounts being firmed up. Yet, the Learned Arbitral Tribunal has been conservative even on this count and has proceeded to

grant interest only from the date of reference to arbitration, which was in 2010, even while the Dissolution Date was way back on April 24, 2008.

41. In these circumstances, it is contented by Mr. Sen that Khan, who has deliberately withheld the full true and fair picture of the state of affairs of Saras Developers; absented himself from the arbitration proceedings; and has done his best to frustrate the effective conduct of the arbitration proceedings, could never enjoy the credibility necessary to invoke principles of fairness and equity to challenge the Impugned Award, although ostensibly, the challenge to the Arbitral Award is attempted to be fitted within the two fundamental facets of patent illegality and ignoring of vital evidence.

**Analysis and findings:**

42. Having heard the parties and having examined the record, I find that the matter is fairly straightforward. To begin with, the Learned Arbitral Tribunal has well articulated how he has appreciated the evidence before him and arrived at the finding that Alka had not retired from Saras Developers. The very signatures on the disputed deeds had been questioned by the Registrar of Firms and despite clarifications having been sought, none were provided by Saras Developers. This led

to the changes reported in the disputed deed i.e. the First 2002 Deed, the Second 2002 Deed, the 2003 Deed and the Retirement Deed, not being accepted by the Registrar of Firms. As a result, these changes did not get into the Register. When this event took place, a notary was approached and he obliged with a certification of the signature having been made in his presence. This led to Alka proceeding against the notary, which culminated in disciplinary action against the notary.

43. The Learned Arbitral Tribunal also examined other contemporaneous evidence. The Income-tax Department confirmed that there was no evidence of partnership deeds to support Alka's cessation as partner as claimed by Saras Developers in its tax returns. The Learned Arbitral Tribunal also examined the findings of the Sessions Court in anticipatory bail applications of two individuals connected with the allegation of fraud in preparing the disputed deeds, which indicates that Alka's purported signatures on the deeds did not tally with her signature on the power of attorney signed by Alka. This finding was upheld by this Court.

44. Having seen the analysis of the evidence and how it has been weighed and appreciated, no reasonable person could contend that the findings of the Learned Arbitral Tribunal in relation to the disputed deeds, are unreasonable, arbitrary or passed without proper

appreciation of vital evidence. The Learned Arbitral Tribunal has done a detailed analysis of the evidence before it, weighed it, and adjudicated it fairly. It is not for this Court to second-guess the appreciation of evidence and substitute findings as if it were an appellate Court.

45. Once it was found that Alka was indeed an 80% partner in the firm and the purported dilution and subsequent retirement in a series of steps between 2002 and 2003 was not credible at all, the Learned Arbitral Tribunal's assessment had to move to discerning the monetary claim. This was actively and positively frustrated by Khan simply going missing from the arbitration. Evidently, the role of Sovind and the marital discord between Alka and Sovind looms large over the proceedings. However, what the Section 34 Court has to consider is whether the Learned Arbitral Tribunal has done right in its approach to the adjudication, and whether the grounds on which Khan would challenge the Impugned Award, lend themselves for acceptance.

**Reliance on Sales Turnover and not Tax Returns:**

46. A core contention by Mr. Toor is that the Learned Arbitral Tribunal ignored vital evidence in the form of contents of Income-tax Returns, which according to him, undermines the adjudication that is based on assessment of admitted sales turnover of Saras Developers.

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This may seem attractive but has to be stated to be rejected. Audited financial statements and the underlying books of accounts of a partnership firm are meant to present a true and fair view of the state of affairs of the partnership firm. The tax returns are meant to draw from such financial information, purely from the perspective of conformity with tax laws, and determination of taxable income, and effecting of permissible deductions from them.

47. As such, every business enterprise would have both sets of financial information – the commercial and mercantile reality of the business as discernible from the audited financial statements, and the tax compliance and computation of tax payable being discernible from the tax returns. The extensive reference to tax returns not having been analysed in the Impugned Award, and that too by a party that was not the party that produced the returns, is unacceptable. It would not lie in the mouth of Khan, who undermined justice delivery in the matter by refraining from producing the audited financial statements and books of accounts (even the tax returns became available only from Alka's efforts under the RTI Act) to try to pick holes in the approach would lead to a party that has not come to Court with clean hands, who can be non-suited if he were the one prosecuting the claim, being permitted to undermine the findings in the adjudication that was sought to be

crippled by the very party that came with unclean hands. The abject refusal to provide the audited financial statements would enable drawing of an adverse inference and the Learned Arbitral Tribunal has meticulously analysed the information available to assess the position.

48. Mr. Sen is right that Khan's attempts at undermining the conduct of the arbitration has led to what could be regarded as an under-assessment of Alka's entitlements as an 80% partner in Saras Developers. The very evidence of 97 flats being sold for a mere Rs. 13.20 crores; read with the steadfast refusal to provide the real audited financial statements; seen along with Khan happily confirming that the information about the sales being a matter of record; taken together with the information on the sales figures having been extracted from the publicly available registered conveyances, all point to the adjudication of the monetary relief being a reasonable, logical and plausible one. It is not for this Court to sit in judgement as if it were an appellate court. On the contrary, all that the Section 34 Court must do is to see if the grounds on which an arbitral award is challenged fits within the parameters of challenge under Section 34 of the Act. If it does not so fit, the arbitral award should be left undisturbed.

49. Seen from this prism, there is no basis to find fault with the findings on monetary compensation. The Learned Arbitral Tribunal

had to examine what was its assessment of the true and fair state of affairs of Saras Developers, in which very logically and reasonably, Alka was found to have been a partner with 80% share. It is no argument to state that the computation of taxable income should inform this exercise, and that too from the mouth of the party that withheld the financial information and did not even choose to deal with the information flowing from the tax returns. Besides, the assessment of Alka's 80% share has been made on the basis of the sales turnover confirmed by Khan to be a matter of record and on that, the Learned Arbitral Tribunal has applied a significant margin of costs and reduced it further to arrive at financial entitlement of an 80% partner. I see no reason to interfere with this empirical and logical approach to effecting a best judgement on the part of the Learned Arbitral Tribunal despite the party assailing the Impugned Award having been the party that did its best to frustrate the proceedings.

**Varying Partnership Stakes:**

50. The next issue is of the Learned Arbitral Tribunal allegedly not having seen the varying partnership stakes between the 1990s and the 2000s. Alka had not had an 80% share throughout the period of sales and therefore, the Impugned Award is assailed by Mr. Toor on Khan's behalf. This too does not lend itself to acceptance. When

dissolution of a partnership firm is sought, the financial position of the firm as of the date of dissolution is to be seen. The stakes as of that that have to be examined. Accumulated profits and accumulated losses accrue and get stated in the financial statements, which were kept hidden by Khan.

51. It can be nobody's case that the Learned Arbitral Tribunal believed that the only way to compute a partner's share and the application of the provisions of the law governing determination of partner shares can be given a go-by. If the Learned Arbitral Tribunal had before it the requisite financial information that Khan was meant to provide and yet deviated, it would be a completely different matter. The Learned Arbitral Tribunal was doing its best as an arbitrator to conduct a best judgement assessment of what the financial statements ought to have contained, bracing against the subversive conduct of Khan and his other purported partners including Sovind.

52. It is in that context that the Learned Arbitral Tribunal has meticulously explained why it was taking the approach it did to arrive at the monetary award. Therefore, the party that refrained from explaining the varying stakes over a period of time, cannot be heard to pick holes on the approach. It can also be nobody's case that Khan's refusal to part with information rendered it a fair game for the Learned

Arbitral Tribunal to come up with whatever method it chose to arbitrarily compute the monetary award. The Learned Arbitral Tribunal has not done that, and instead it has based its computation on confirmed sales turnover of the entire project. The adjustments for varying stakes over time is inherent in the method of a reasonable guess work that the Learned Arbitral Tribunal was entitled to make. The margin of 30% was applied and hypothetical costs were reduced, and then the share was arrived at.

53. The Learned Arbitral Tribunal was inclined to make such guess work and it has done so reasonably. I am unable to accept Khan's contention that this is not accurate computation resulting in any perversity. It is trite law that even any perversity complained of against an arbitral award ought to be of such order and magnitude that cuts to the root of the matter. The shoe is on the other foot in this case when it comes to perversity in approach. It was Khan and his purported partners who have been fairly held to have not been partners, who have subverted justice delivery in the instant case and withheld information necessary to adjudicate.

54. What is a pointer to Khan protesting too much is the contention that all the records of Saras Developers were somehow washed away in floods of Mumbai city. When floods wash away records,

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there should be no reason to file a police complaint but Khan contends that such a complaint too had been filed. The contentions are simply not worthy of acceptance – evidently, every possible and conceivable step to frustrate the ascertainment of truth was adopted against Alka, leaving the Learned Arbitral Tribunal with no option but to adopt a reasonable best judgement assessment of what the financials of Saras Developers would be.

55. For the same reason, the contention that Khan’s additional affidavit had information on costs incurred, purchase of TDR and the like, and that these had not been considered, are self-serving submissions. It is not for a party to throw at an Arbitral Tribunal disparate information, and then refrain from participation in the proceedings, only to then contend that whatever had been thrown at it before abandonment of the proceedings ought to have been dealt with by the Arbitral Tribunal. In fact, the Learned Arbitral Tribunal was entitled to adopt the position that Khan was not pressing his contentions in the additional affidavit. Yet, the Learned Arbitral Tribunal has adopted a reasonable approach to estimation without arbitrariness, instead of wringing its hands helplessly by Khan undermining adjudication by the Learned Arbitral Tribunal.

**Limitation Contention:**

56. The contention on limitation too has been dealt with by the Learned Arbitral Tribunal reasonably and well. First, it noticed that between 2008 and 2010 the parties had engaged in mediation on the nudge of this Court. Participation in mediation under the Court's directions cannot be counted as leading to time-barring of the claim.

57. That apart, as regards the arguments made before this Court on the facet of limitation, I am unable to accept Khan's contention that when a dispute over dissolution of a partnership firm arises, only the activity of the past three years would fall within the zone of consideration. This would be absurd – every year, every partner would be considered to have lost the right to make any claims to accruals that have earned for the period prior to the preceding three years. Effectively this would be reset of entitlements every year losing anything attributable to the period prior to the past three years.

58. On the contrary, it should be remembered that the profit and loss account depicts the picture of the financial year in question (it always relates to a period) and that culminates in depiction of the balance sheet as of a particular date (it always depicts the position of a business on a given date). Accumulated profits and losses, reserves and

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surpluses, balances in the capital account – all are generated and accrued over the life of the partnership. When the firm is dissolved, the balance sheet is broken down and the distribution of such accruals is effected. If this basic first principle is borne in mind the abstruse and complicated contentions about limitation would work themselves out.

59. Equally, when a partner retires, the firm moves forward with remaining partners with the financial position being iterated for the continuing partners. The contention that accounts were settled up in 1997 when Ramesh retired is also only to be stated to be rejected. Accounts due to Ramesh would be settled but the accumulated earnings would continue to enure to the benefit of the continuing partners with the balances in the capital account.

60. Implicit in the Impugned Award is the fact that the Learned Arbitral Tribunal was not at all wrong in handling the approach to the dissolution of Saras Developers either in terms of assessment of value or in terms of limitation. I am not impressed with the contentions in this regard, and reject the same for the aforesaid reasons.

**Other Facets:**

61. The Learned Arbitral Tribunal has returned a finding that, right until the Dissolution Date, Alka had an 80% share in the business

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and profits of Saras Developers, and that despite her entitlement, she had neither received nor been paid anything towards such entitlement. The claim by Khan that Alka had contributed nothing towards Saras Developers was found not to form part of the case pleaded by Khan. The Learned Arbitral Tribunal had placed reliance on Exhibits TT, UU and VV to the Statement of Claim, the contents of which were held to have been conceded by Khan.

62. It was also noted that Khan had not dealt with this facet of the claim and had simply refrained from producing any evidence whatsoever, including Statements of Accounts and Balance Sheets of Saras Developers. The Learned Arbitral Tribunal held Alka to be an 80% partner of Saras Developers and on appreciation of evidence found that the First 2002 Deed, the Second 2002 Deed, the 2003 Deed and the Retirement Deed were not proven and could not be believed. This overall approach indicates a clear and cogent structure to the thinking and reasoning by the Learned Arbitral Tribunal. The Impugned Award is not worthy of interference.

63. It is not necessary to expend too much analysis on the arguments of whether a partner is a debtor or a creditor. Suffice it to say, a partner is a part owner and on dissolution becomes a creditor or debtor. The Dissolution Notice is what led to termination of

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partnership. Until then, the business was running as a going concern and the partners had their entitlements to the accumulated financial position of the partnership firm as crystallised pursuant to the dissolution.

64. The contention that Alka had slept over her rights and contributed nothing also cannot be accepted. Alka trusted her partners and was entitled to rely on the legal requirement of every partner having to act in good faith towards other partners and the partnership firm. Alka having been given two flats of the partnership too would be a matter of keeping accounts, which were withheld by Khan from the Learned Arbitral Tribunal. The computation of turnover and deemed costs and resultant profits are all based on actuals as depicted from the registered sale deeds. Therefore, on this count too, no interference is called for. For the same reason, the contention that tax returns of each partner and of the partnership indicating every year what the income of the partner from the partnership firm was, is meaningless, coming as it does from a litigant who has in his possession the financial statements but withheld it from the adjudicatory process to subvert the outcome.

65. The Section 34 Petition is ***finally disposed*** of in these terms, except on the facet of costs, which is deferred for consideration

along with the Contempt Petition on the next date. Interim Applications if any shall also stand disposed of.

66. Since costs have to follow the event, Alka shall submit an affidavit on the costs incurred till date in the matter, along with supporting documentation for further consideration of this aspect of the matter. Such affidavit shall be filed within a period of two weeks from today. Khan may file an affidavit dealing with such affidavit within a period of two weeks thereafter.

**Contempt Petition No. 102 for 2015:**

67. This leads me to the Contempt Petition No. 102 for 2015 alleging contempt for wilful disobedience of directions of the Learned Arbitral Tribunal under Section 17 of the Act. I have upheld the Impugned Award above. However, it is quite clear that the administration of justice has been undermined by Khan. Mr. Toor would point to Khan's ailments to plead against sending him to jail.

68. What has transpired here is that despite explicit protective orders of the Learned Arbitral Tribunal, and in the teeth of the power of attorney being revoked by Alka, alienation of flats and properties of Saras Developers was persisted with by Khan and Sovind.

69. This Petition has had a chequered history with the Learned Single Judge of this Court initially holding that the powers of contempt could not be available under Section 27 of the Act in connection with arbitration proceedings and that Section 27 is primarily for administrative assistance of the Court for taking evidence. This view came to be set aside by the Supreme Court, which held that the powers under Section 27 would indeed cover wilful disobedience of directions of Arbitral Tribunals, in particular, after the amendment of Section 17 of the Act. Therefore, the Petition was sent back to this Court for consideration of the same on merits and on facts.

70. In the course of Arbitration Proceedings, Alka filed an Application under Section 17 of the Act seeking various protective reliefs in the form of restrictions of alienation of assets and property and disclosures of Bank Accounts, Statement of Accounts of Saras Developers for ten years and accounts of income and profits made by Saras Developers from the sale of flats in the buildings.

71. Khan too filed four Interim Applications seeking to restrain Alka against filing any complaints to anyone claiming that she was a partner of Saras Developers; an application seeking dismissal of the Statement of Claim as being barred by limitation; an application seeking a declaration that the primary prayer in the Statement of Claim was not

within the jurisdiction of the Learned Arbitral Tribunal; and the order declaring that Khan is entitled to register flats in the name of flat purchasers.

72. On October 07, 2010, the Learned Arbitral Tribunal issued directions essentially directing Khan to furnish particulars in respect of disposal of flats within a week in the format stipulated and directing that any further disposal of flats would only be after seeking leave of the Learned Arbitral Tribunal and furnishing particulars to Alka's Advocate well in advance of making application seeking such need.

73. However, immediately thereafter, on October 14, 2010, five flats were actually transferred with the transfers being executed in blatant violation of the order dated October 07, 2010. Neither was leave of the Tribunal taken nor was Alka intimated about the same. This led to Alka seeking a relief in the form of appointment of a Receiver to take control of the assets and also seeking a direction that Khan's statement of defence should be struck out.

74. All the applications filed by Khan and Alka were heard jointly on March 26, 2012. Khan did not press the Application seeking a restraint on Alka from filing any complaints claiming to be a partner. The Interim Application containing contentions about jurisdiction was

disposed of since the issues had already been framed in this regard. An Interim Application seeking permission to register the flats on which third party rights had already been created, was dismissed by the Learned Arbitral Tribunal.

75. Specifically, for the financial year 2003-04, the Tribunal was pleased to direct Khan to offer inspection of the books of accounts, audited statements of income and expenditure, balance sheet and income tax returns. Khan was also directed to disclose to Alka in writing the details of the assets of Saras Developers and particulars of bank accounts maintained by it. Full particulars of the flats that had been sold and unsold was asked to be provided, all within a period of four weeks from that date. The prohibition on alienation of assets was reiterated and the need to ensure that prior notice is given to Alka and prior approval of the Tribunal is taken for future disposals was also reiterated. A bank guarantee was directed to be furnished in the sum of Rs.~1.25 crores to be kept alive pending conduct of the arbitration proceedings.

76. The order passed on March 26, 2012 was challenged under Section 37 of the Act. No interim reliefs were granted on the challenge, which in turn led to Khan filing a Special Leave Petition in the Supreme Court, which issued notice and stayed further arbitration proceedings. However, the Special Leave Petition was dismissed on September 02,

2013 making it obligatory on Khan's part to comply with the interim order dated October 07, 2010 and further directions issued on March 26, 2012. However, none of this was complied with and the gross defiance of the measures continued.

77. Further non-compliance is also seen with Khan executing in June 2014, Deeds of Confirmation, confirming the sale of the four flats, the disposal of which had been explicitly refused by the Learned Arbitral Tribunal on March 26, 2012. Having examined such conduct, it is clear that the alleged contemnor has demonstrated utter disregard and contempt for the justice delivery process in the arbitration proceedings. There was wilful disobedience and breach of not just the directions passed in the 2010 Interim Order but also 2012 Interim Order, a challenge to which came to a nullity with no ability to justify non-compliance with them. Inspection of records was not granted. No asset disclosure was made. No bank guarantee was provided. Costs directed to be paid was not paid, and a further Deed of Confirmation was executed confirming the sale of the very same flats that had been sold in utter violation of both the aforesaid Interim Orders.

78. It is in these circumstances that the Contempt Petition sought punishment of a terms of imprisonment of six months and imposition of fine of Rs.2,000/- in terms of the Contempt of Courts Act.

79. Mr. Toor, on behalf of Mr. Khan would submit that there was no intention on the part of Khan to commit any wilful disregard of the directions issued by the Learned Arbitral Tribunal. Khan had purportedly *bona fide* believed that the recusal by the Learned Arbitrator from the proceedings between Alka and Sovind, would also lead to his recusal from the arbitration in relation to Saras Developers. Therefore, Khan is said to have tabled the request for recusal. This does not inspire any confidence, since in any case, Khan simply played truant with the Learned Arbitral Tribunal after such an application, leaving it to the vagaries of litigation to evolve an outcome of its own, with a potential for errors in the adjudication giving grounds to challenge the outcome.

80. Mr. Toor also submits that in any case, the Learned Arbitral Tribunal indeed had access to the relevant papers owing to the replies to the queries under the RTI Act and that the Registrar of Firms and the Income Tax Department had provided all material that would enable adjudication of the proceedings and that indeed, the Arbitral Award relies upon such records to return its findings. Therefore, he would submit that lenient view may be taken inasmuch as there has been no frustration of the adjudication process since in any case the material did become available to the Learned Arbitral Tribunal.

81. Mr. Toor would submit an unconditional apology on behalf of Khan in the matter and submit that a lenient view may be taken, also bearing in mind the age and the ailments that Khan is going through.

82. Mr. Sen on the other hand would submit that the conduct by Khan has indeed been contumacious. Khan simply stayed away from participating in the arbitration proceedings. He did not provide any data. Specific directions under Section 17 of the Act directing him to produce information were wilfully ignored. In particular, the order dated October 7, 2010 was deliberately ignored and therefore in his view, that Khan was contemptuous of justice delivery processes is proven beyond reasonable doubt. Mr. Sen would leave it to the Court to consider such action as considered appropriate by this Court.

83. Having examined the record, it appears that Khan was the 20% partner when Alka was the 80% partner. The disputed deeds (the First 2002 Deed, the Second 2002 Deed, the 2003 Deed and the Retirement Deed) would show a systematic fake dilution of Alka in which Khan was not alone – Sovind has evidently played an out-sized role in undermining Alka's entitlements and is not before this Court. Since Alka only recognised the undisputed position as obtaining prior to her dilution under the disputed deeds, the others were not parties to these proceedings. Khan being the only other partner has alone been

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arraigned in the contempt proceedings, when the mastermind may be elsewhere. The position Khan is in, is abject. However, Khan was not alone, and he appears to have been one of the many players involved in subverting the arbitral process. The disputes between Alka and Sovind have not been heard by this Court. Therefore, this Court is constrained to examine only Khan's role in these proceedings at this stage.

84. Considering the wanton and deliberate manner of conduct, it would not be appropriate to let this off lightly. This is a fit case for framing of charges for consideration of criminal consequences for such conduct. Yet, taking into account Khan's purported ailments and the sheer persuasiveness on the part of Mr. Toor, I consider it appropriate to give Khan an opportunity to truly purge the contempt alleged.

85. In my opinion, the only way for Khan to purge the contempt alleged is to deposit the entire awarded amount along with interest computed until the date of pronouncement of this judgement with the Registry of this Court ***within a period of six weeks*** from the pronouncement of this judgement. This would be the only means of truly indicating remorse on his part and to assure the Court that the apology is not lip service. If such deposit is made, the Court would consider whether the next stage for criminal contempt must be resorted

to in terms of framing of charges. If no such deposit is made, the matter shall be listed for framing of charges.

86. The Contempt Petition shall be listed for further consideration and reporting compliance after six weeks.

87. As stated above, the assessment of costs for this round of litigation including in the Section 34 Petition is deferred for further consideration when the Contempt Petition would come up for consideration on the next date.

88. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

**[ SOMASEKHAR SUNDARESAN, J.]**