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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

AUGUSTINE GEORGE MASIH; J., ATUL S. CHANDURKAR; J.

AUGUST 14, 2025.

CIVIL APPEAL NO. OF 2025 [Arising out of SLP (Civil) No. 29398 of 2024]

SANJIT SINGH SALWAN & ORS. *versus* SARDAR INDERJIT SINGH SALWAN & ORS.

Arbitration and Conciliation Act, 1996 - Section 9 - Code of Civil Procedure, 1908 (CPC) - Section 92 - Order VII Rule 11 - Rejection of Complaint – Held, respondents having agreed to resolve the dispute through arbitration and subsequently obtaining consent decree in their favor based on the arbitral award, could not later the award as a nullity due to non-arbitrability under Section 92 of CPC - Respondents conduct of “approbation and reprobation” to be impermissible and barred by the doctrine of estoppel by conduct and election - Appellants were granted liberty to revive their withdrawn execution proceedings to enforce the consent decree - The respondents were estopped by their conduct from raising the issue of non-arbitrability after having benefitted from the arbitration and the resulting consent decree. [Paras 14- 20]

Doctrine of estoppel by conduct and election - Supreme Court applied principle that a party cannot “approbate and reprobate” or “blow hot and cold” by taking inconsistent positions in court proceedings - It was noted that respondents had initially pleaded that their suit was not barred by section 92 CPC, then willingly referred the dispute to arbitration and accepted the award, leading to a consent decree in their favor - Subsequent attempt by respondents to challenge the validity of the award was deemed an impermissible change of position - Held that there can be no estoppel against the law, the issue in this case was an “equitable hurdle of estoppel” based on respondents conduct, which had caused the appellants to alter their position to their detriment - Appeal allowed. [Relied on *Mumbai International Airport Private Ltd. v. Golden Chariot Airport* 2010 10 SCC 422; *Dhiyan Singh & Anr. V. Jugal Kishore & Anr* AIR 1952 SC 145.; *R.N. Gosain v. Yashpal Dhir* SLP(C) No. 4325 of 1992; Paras 17-19]

For Petitioner(s): Mr. C. U. Singh, Sr. Adv. Mr. Punit Dutt Tyagi, AOR Ms. Smriti Sahai, Adv. Mr. Shikhar Tyagi, Adv. Ms. Pragati Singh, Adv.

For Respondent(s): Mr. Gagan Gupta, Sr. Adv. Mr. Sanchit Garga, AOR Mr. Amit Wadhwa, Adv. Mr. Shashwat Jaiswal, Adv.

J U D G M E N T

ATUL S. CHANDURKAR, J.

1. Leave granted.
2. The issue that arises for consideration in these proceedings is whether a plea of estoppel in law can be permitted to be raised by a party ignoring its conduct that resulted in the other party altering its position to its detriment in view of such conduct.
3. Facts relevant for deciding the Civil Appeal are that the appellants and the respondents claim to be trustees of Guru Tegh Bahadur Charitable Trust (hereinafter referred to as ‘the Trust’). On disputes arising between the parties, the respondents claimed that the appellants had been removed as trustees. The respondents approached the Civil Court by filing a suit for perpetual injunction seeking to restrain the appellants from entering the school being conducted by the Trust and also from interfering with the functioning of the school. The appellants filed an application under provisions of Order VII

Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') seeking rejection of the plaint. The Trial Court on 13.04.2022, accepted the contentions of the appellants and rejected the plaint holding that in view of Section 92 of the Code, the suit was barred. The respondents being aggrieved by the dismissal of their suit filed an appeal before the District Court. During the pendency of the appeal, the respondents moved an application dated 07.07.2022 in which it was stated that the appellants as well as the respondents had appointed a sole arbitrator to resolve their disputes after which the process of arbitration had been undertaken. It was stated that the appeal filed by them be decided on the basis of the award passed by the sole arbitrator.

4. On 30.12.2022, the sole arbitrator passed his award and made an arrangement between the parties as regards the manner of managing the affairs of the Trust. In view of the said award, the parties moved a joint application in the pending appeal before the District Court on 02.01.2023 stating therein that they had accepted the award and that they would abide by it in true spirit. They sought disposal of the appeal in terms of the award. Accordingly, on 27.01.2023, the District Court disposed of the appeal in terms of the award dated 30.12.2022. It was directed that the compromise deed recording the said award would form part of the decree. It is common ground that this decree passed by the District Court on 27.01.2023 was not challenged any further and the same continues to hold field even today.

5. According to the appellants, they took various steps in terms of the award so as to comply with their part of obligations. It was their grievance that the respondents however failed to discharge their obligations under the award. Ultimately, on 23.11.2023 the appellants filed Miscellaneous Case No.122 of 2023 seeking to execute the aforesaid compromise decree. The said proceedings however were withdrawn by the appellants on 08.12.2023, after which the appellants filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996"). In the said proceedings, the appellants sought various interim measures in terms of the arbitral award. This application was opposed by the respondents. The learned Judge of the Commercial Court on 24.05.2024 went into the issue of arbitrability of the disputes between the parties and on finding that the disputes pertained to the affairs of the Trust held that in view of the provisions of Section 92 of the Code, the arbitrator could not have gone into the same. It was held that the award dated 30.12.2022 was a nullity and hence there was no question of its enforcement. Accordingly, the application filed by the appellants under Section 9 of the Act of 1996 came to be rejected. The appellants, being aggrieved, filed an appeal under Section 37 of the Act of 1996. The High Court declined to interfere with the order passed by the Commercial Court and affirmed the finding that the dispute was non-arbitrable. The High Court accordingly dismissed the said appeal on 30.08.2024. The appellants being aggrieved by the aforesaid decision have approached this Court.

6. Mr. C.U. Singh, learned Senior Advocate for the appellants submitted that the parties having accepted the award passed by the arbitrator on 31.10.2022 which thereafter resulted in a consent decree being passed by the District Court on 27.01.2023, it was not permissible for the respondents to disregard the same and contend that the consent decree was not binding upon them. In fact, the consent decree had become final and therefore the appellants were justified in seeking interim measures on that basis under Section 9 of the Act of 1996. The appellants in accordance with the terms of the consent decree had complied with their obligations by taking necessary steps but no reciprocal steps were taken by the respondents. The respondents had consented to the passing of the consent decree in the suit filed by them. Hence, by their conduct they were estopped

from questioning the validity of the consent decree and raising the ground of non-arbitrability. In this regard reliance was placed on the decisions of this Court in **Suzuki Parasrampuriah Suitings Private Ltd. v. Official Liquidator of Mahendra Petrochemicals Limited & Ors.**, (2018) 10 SCC 707, **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) & Ors. v. Director General of Civil Aviation and Ors.**, (2011) 5 SCC 435, **Mumbai International Airport Private Ltd. v. Golden Chariot Airport and Anr.**, (2010) 10 SCC 422 and **Karam Kapahi and Ors. v. Lal Chand Public Charitable Trust and Anr.**, (2010) 4 SCC 753. The conduct of the respondents disentitled them to oppose the enforcement of the consent decree as it had become final.

Without prejudice to the aforesaid contentions, it was urged that even if it was to be held that in view of Section 92 of the Code, the disputes were non-arbitrable, the appellants were entitled to the fruits of the consent decree. The appellants had in fact filed execution proceedings but the same were withdrawn so as to invoke the provisions of Section 9 of the Act of 1996. As a result of the impugned orders, the appellants were left without any remedy whatsoever despite the existence of a consent decree that had attained finality. Reference in this regard was made to the decisions of this Court in **Indore Development Authority v. Manoharlal & Ors.**, (2020) 8 SCC 129 and **Kavita Trehan & Anr. v. Balsara Hygiene Products Ltd.**, (1994) 5 SCC 380. It was thus urged that this Court ought to exercise jurisdiction so as to enable the appellants to enjoy the fruits of the consent decree.

7. On the other hand, Mr. Gagan Gupta, learned Senior Advocate for the respondents while opposing the appeal submitted that notwithstanding the passing of the consent decree, the Commercial Court was justified in holding the award dated 30.12.2022 to be a nullity. The issues dealt with by the sole arbitrator related to affairs of the Trust. In view of Section 92 of the Code, the same could not have been the subject matter of arbitration. It was submitted that the award dated 30.12.2022 and the subsequent order passed by the District Court could not be treated to be a consent decree. The appeal was merely disposed of on the joint application of the parties. The Commercial Court therefore rightly held the award to be a nullity which could not be executed. Since the arbitrator had dealt with an issue over which he had no jurisdiction, this aspect went to the root of the matter and could be raised at any point of time. The Commercial Court therefore in proceedings filed under Section 9 of the Act of 1996 rightly refused to grant any interim measures under Section 9 of the Act of 1996. Reliance was placed on the decisions of this Court in **Vimal Kishor Shah and others v. Jayesh Dinesh Shah and others**, (2016) 8 SCC 788 and **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. and others**, (2011) 5 SCC 532. It was also urged that the appellants having themselves withdrawn the execution proceedings for invoking the jurisdiction under Section 9 of the Act of 1996, they could not be now permitted to contend that they should be permitted to execute the consent decree. In any event, since the award had been held to be a nullity there was no question of it being executed. Reliance was placed on the decisions of this Court in **Sunder Dass v. Ram Prakash**, (1977) 2 SCC 662 and **Prem Singh and Ors. v. Birbal & Ors.**, (2006) 5 SCC 353. To urge that there could be no estoppel against law, reliance was placed on **State of Rajasthan and another v. Surendra Mohnot and others**, (2014) 14 SCC 77. It was thus submitted that the appellants had been rightly denied the relief and the impugned orders did not warrant any interference.

8. We have heard the learned counsel for the parties at length and with their assistance we have also perused the documentary material on record. At the outset, it would be necessary to refer to certain admitted facts on record. The Trust deed in question is dated 15.10.1979 which indicates various objects of the Trust. The same include

providing for educational facilities in various fields by establishing and maintaining institutions of learning. Various other ancillary objects have been stated therein. The respondents being aggrieved by the alleged interference of the appellants in the affairs of the Trust approached the Civil Court by filing a suit for perpetual injunction seeking to restrain the appellants from entering the premises of the school being run by the Trust and also from interfering with the functioning of the said school. In paragraphs 19A to 19C of the plaint, the respondents pleaded as under:

“19A. That the relief claimed in the present suit does not fall within the ambit and scope of Sec. 92 CPC. Provisions of Section 92 CPC in the matter of dispute is not at all attracted. The suit has not been filed, seeking relief pertaining to any matter enumerated in Section 92 CPC.

19B. That the suit is not barred by any of the Provisions of Arbitration & Conciliation Act 1996, because the subject matter and relief of the suit does not tantamount to dispute which can be referred to Arbitration. The terms of the Trust Deed do not attract any Arbitration Clause. The present parties to the suit were not signatories of the Trust Deed.

19C. That this Hon'ble Court u/S. 9 CPC has jurisdiction to hear and decide the suit.”

(Emphasis supplied)

9. It was the appellants who sought to raise an objection to the jurisdiction of the Civil Court by raising a ground that the suit was barred by law in view of Section 92 of the Code. This application was opposed by the respondents asserting that the suit was legally tenable. The Trial Court by its order dated 13.04.2022 proceeded to hold that in view of Section 92 of the Code, the Civil Court had no jurisdiction to try the same. The plaint was accordingly rejected under provisions of Order VII Rule 11 of the Code. The respondents being aggrieved, challenged the said order by filing an appeal under Section 96 of the Code. During pendency of the said appeal, the respondents moved an application dated 07.07.2022 stating therein that the respondents as well as the appellants had decided to have their disputes resolved mutually. In the said application it was averred as under:

“In this appeal appellants as well as respondents have mutually decided to get their matter resolved out of the Court under arbitration of Shri Vipin Sodhi, Advocate, Meerut. The appellants have appointed Shri Vipin Sodhi, Advocate, 105, Carriappa Street, Meerut Cantt as their sole arbitrator in all or any dispute pertaining to Guru Tegh Bahadur Charitable Trust and its school at 227, West End Road, Meerut Cantt etc. Partnership firm M/s Sri Guru Tegh Bahadur Public School, Delhi Road, Meerut or any other connected matters, on 27.5.2022. Shri Vipin Sodhi, Advocate, has accepted to be an arbitral tribunal to decide all disputes and to give his final award. Shri Vipin Sodhi has entered upon the Reference of arbitration and various sittings have already taken place. As per oral submissions of appellant Arbitrator has taken into points in dispute. Version of the appellants has been recorded. Entire disputes raised by the appellants have been taken into consideration and the arbitration is in process.

It is, therefore, very humbly prayed that this appeal should be decided from the outcome of final award passed by the Arbitrator Shri Vipin Sodhi, Advocate, Meerut.”

(Emphasis supplied)

10. The sole arbitrator on 30.12.2022 passed his award and issued various directions. Both the parties thereafter filed a joint application before the Appellate Court on 02.01.2023 praying that the appeal be disposed of in terms of the award dated 30.12.2022. In the said joint application it was stated as under:

“Both the parties humbly submits as under:

That the Learned Arbitral Tribunal Sole Arbitrator Shri Vipin Sodhi, Advocate Meerut has passed the Award dated 30.12.2022 in our matter. Copy of the Award is enclosed. We both parties accept

the Award and it shall be binding on us. We shall not challenge the award and will abide by it in true sense and spirits.

That the Appeal be decided accordingly in terms of award.

It is, therefore, prayed that in view of award enclosed this appeal be disposed of as per law.”

(Emphasis supplied)

11. The Appellate Court noted the aforesaid and took on record the compromise deed dated 02.01.2023. The same was marked as Document No. 25C. On 27.01.2023, the Appellate Court disposed of the appeal in terms of the compromise deed which was to form part of the decree. The said order reads as under: -

1. Challenge in this civil appeal is to the judgment and decree dated 13.04.2022 passed by learned Civil Judge (Sr. Div.) Meerut, which was passed by him in O.S. No. 227 of 2022 Guru Tegh Bahadur School and others versus Sardar Sanjt Singh Salwan and others.

2. During pendency of this appeal, good sense prevailed between the parties and their dispute has been decided by sole Arbitrator Shri Vipin Sodhi, Advocate who has passed an award on 30.12.2022 and all the parties have accepted, the same. They filled compromise deed 25C on 02.01.2023, wherein they accepted passing and finalization of the award. Compromise deed read over and explained to the parties on 06.01.2023, and they accepted the contents thereof.

3. In opinion of this court, the said compromise is lawful. Hence, it would be proper to decide this appeal in terms of compromise deed/application 25C.

Order

This civil appeal is decided in terms of compromise deed/application 25, which shall form part of decree.

The parties shall bear their own respective costs throughout.”

(Emphasis supplied)

12. From the aforesaid material on record, it becomes clear that it was the respondents who invoked the jurisdiction of the Civil Court by filing suit for perpetual injunction against the appellants. It was their case that the suit as filed was not barred by the provisions of Section 92 of the Code. Thereafter, in the appeal preferred by them, the respondents moved an application dated 07.07.2022 stating therein that they along with the appellants had decided to end their disputes by having the matter resolved out of Court. The parties again jointly sought disposal of the respondents’ appeal in terms of the award dated 30.12.2022. This request was accepted by the Appellate Court and the respondents’ appeal was disposed of in terms of the compromise deed at Document No. 25C.

These admitted facts clearly indicate that the respondents had taken a conscious stand that the suit filed by them was not barred by Section 92 of the Code and that on the basis of the compromise deed in the form of the award dated 30.12.2022, a decree was passed in the appeal preferred by them. These facts assume importance since they reflect on the conduct of the parties, especially the respondents.

13. After the initial round of litigation when the appellants sought to rely upon the consent deed and filed an application under Section 9 of the Act of 1996 for seeking interim measures, the respondents took a completely opposite stand and raised a plea that the compromise deed in the form of award dated 30.12.2022 was a nullity in view of Section 92 of the Code. They persisted with this stand which found favour with the Commercial Court and thereafter in appeal before the High Court. The question therefore to be considered is whether the respondents could be permitted to take a diametrically opposite

stand from the one taken by them in the earlier stage of the proceedings initiated by them so as to leave the appellants without any remedy.

14. In our view, it would be impermissible for the respondents to take such opposite stand from the one that they had taken while initiating the proceedings. Having specifically pleaded that the suit filed by them was not hit by the provisions of Section 92 of Code, it would not be now open for them to oppose the validity of the compromise deed dated 02.01.2023 by raising such ground. The pleadings of the respondents referred to hereinabove clearly indicate the conscious stand taken by them in the initial round of the present litigation. They had stated on more than one occasion that the proceedings initiated by them were maintainable and that the same were required to be decided on merits. They willingly had the matter referred for settlement and when the award was passed on 30.12.2022 they sought disposal of their appeal in terms of the compromise deed that was prepared on the basis of the award dated 30.12.2022. The respondents therefore by their conduct are now estopped from taking an opposite stand.

15. This position is fortified by the decision of this Court in ***Mumbai International Airport Private Ltd. (supra)***. It was held therein as under:

“44. Is an action at law a game of chess? Can a litigant change and choose its stand to suit its convenience and prolong a civil litigation on such prevaricated pleas?

45. The common law doctrine prohibiting approbation and reprobation is a facet of the law of estoppel and well established in our jurisprudence also. The doctrine of election was discussed by Lord

Blackburn in the decision of the House of Lords in *Scarf v. Jardine* [(1882) 7 AC 345 : (1881-85) All ER Rep 651 (HL)] wherein the learned Lord formulated: (AC p. 361)

“... a party in his own mind has thought that he would choose one of two remedies, even though he has written it down on a memorandum or has indicated it in some other way, that alone will not bind him; but so soon as he has not only determined to follow one of his remedies but has communicated it to the other side in such a way as to lead the opposite party to believe that he has made that choice, he has completed his election and can go no further; and whether he intended it or not, if he has done an unequivocal act ... the fact of his having done that unequivocal act to the knowledge of the persons concerned is an election.”

46. In *Tinkler v. Hilder* [(1849) 4 Exch 187] Parke, B. stated that where a party had received a benefit under an order, it could not claim that it was valid for one purpose and invalid for another. (See p. 190.)

47. In *Clough v. London and North Western Railway Co.* [(1861-73) All ER Rep 646] the Court referred at All ER p. 651 F to Comyn's Digest, wherein it has been stated:

“If a man once determines his election, it shall be determined forever.”

50. Ashutosh Mookerjee, J. speaking for the Division Bench of the Calcutta High Court in *Dwijendra Narain Roy v. Joges Chandra De* [AIR 1924 Cal 600] , held that it is an elementary rule that a party litigant cannot be permitted to assume inconsistent positions in court, to play fast and loose, to blow hot and cold, to approbate and reprobate to the detriment of his opponent. This wholesome doctrine, the learned Judge held, applies not only to successive stages of the same suit, but also to another suit than the one in which the position was taken up, provided the second suit grows out of the judgment in the first.

53. This Court in *C. Beepathuma* case [AIR 1965 SC 241 : (1964) 5 SCR 836] at AIR p. 246, para 17 also took note of the principle stated in *White & Tudor's Leading Case in Equity*, Vol. 18th Edn. at p. 444, wherein it is stated:

“Election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person

from whom he derives one that he should not enjoy both ... That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument.”

54. In *New Bihar Biri Leaves Co. v. State of Bihar* [(1981) 1 SCC 537] this Court observed that it is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim, *qui approbat non reprobat* (one who approbates cannot reprobate), applies in our laws too.”

16. Reference can also be made to the following observations in ***R.N. Gosain vs. Yashpal Dhir, SLP(C) No. 4325 of 1992*** decided on 23.10.1992:

“Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that “a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage”. [see: *Verschures Creameries Ltd. V. Hull and Netherlands Steamship Co. Ltd.*, (1921), 2 R.B. 608, at p.612, Scrutton, L.J]. According to Halsbury’s Laws of England, 4th Edn., Vol. 16, “after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside. (para 1508)”

17. We would now deal with the contention of the respondents that the award as passed by the sole arbitrator was a nullity since it dealt with issues that fell within the purview of Section 92 of the Code. The invalidity of the award could thus be set up at any stage to prevent its execution and that there could be no estoppel against law. This plea as raised by the respondents found favour with the Commercial Court as well as the High Court. The contention though attractive cannot enable the respondents to surmount the equitable hurdle of estoppel. Having lulled the appellants in having the disputes resolved through arbitration and thereafter seeking disposal of their appeal on the strength of the said award, the respondents are definitely estopped from now setting up its invalidity. The issue is more about estoppel by conduct and election rather than estoppel in law. In ***Dhiyan Singh and another v. Jugal Kishore and another, AIR 1952 SC 145***, a family dispute in relation to certain ancestral and self-acquired properties was sought to be resolved through arbitration. Before the Courts it was urged that not only had the arbitrator travelled beyond the terms of his reference by awarding absolute interest in the property to one party when she had limited interest therein, it was also urged that on factual aspects also he was incorrect. It was however found that the other party had accepted the award and by such conduct had induced the former party from parting with a share in her property. Vivian Bose, J. (as his Lordship then was) held as under:

“It was urged, among other things, that the arbitrator had travelled beyond the terms of his reference in awarding Mst. Mohan Dei an absolute interest. It was also urged that even if Brijlal was bound, his son Kishan Lal, who did not claim through him but who had an independent title as reversioner to Shanker Lal, would not be bound, and it was contended that if Kishan Lal was not bound, the plaintiffs would not be either. But we need not examine these points because we do not need to proceed on the binding nature of the award. Even if the award be invalid we are of the opinion that the plaintiffs’ claim is completely answered by the plea of estoppel.”

Now it can be conceded that before an estoppel can arise, there must be, first, a representation of an existing fact as distinct from a mere promise de futuro made by one party to the other; second, that the other party, believing it, must have been induced to act on the faith of it; and third, that he must have so acted to his detriment.

It is true that in one sense a question of title is one of law and it is equally true that there can be no estoppel on a question of law. But every question of law must be grounded on facts and when Brijlal's conduct is analysed it will be found to entail an assertion by him that he admitted and recognised facts which would in law give Mst. Mohan Dei an absolute interest in the lands awarded to her. It was because of that assertion of fact, namely, his recognition and admission of the existence of facts which would give Mst. Mohan Dei an absolute interest, that she was induced to part with about one-third of the property to which Brijlal, on a true estimate of the facts as now known, had no right. There can be no doubt that she acted to her detriment and there can, we think, be equally no doubt that she was induced to do so on the faith of Brijlal's statements and conduct which induced her to believe that he accepted all the implications of the award. But in any event, we are clear that Brijlal would have been estopped. The nature of the dispute and the description of it given in the award show that there was considerable doubt, and certainly much dispute, about the true state of affairs. Even if the arbitrator was wholly wrong and even if he had no power to decide as he did, it was open to both sides to accept the decision and by their acceptance recognise the existence of facts which would in law give the other an absolute estate in the properties they agreed to divide among themselves and did divide. That, in our opinion, is a representation of an existing fact or set of facts. Each would consequently be estopped as against the other and Brijlal in particular would have been estopped from denying the existence of facts which would give Mst. Mohan Dei an absolute interest in the suit property."

(Emphasis supplied by us)

18. In our view, the ratio of the aforesaid decision is a complete answer to the defence raised by the respondents on the plea of estoppel against law. It is only because the respondents consented to have the disputes resolved through the arbitration of Mr. Vipin Sodhi that the compromise deed was executed and the respondents' appeal was disposed of accordingly. The appellants thereafter acted in accordance with the terms of the consent deed and altered their position to their detriment. They took steps to withdraw the First Information Report and also parted with substantial amounts as required by the consent deed. All these facts are sufficient to hold that after the parties accepted the consent deed, the appellants acted in accordance with its terms and altered their position. The respondents thus by their conduct of accepting the compromise deed based on the award of the arbitrator are now precluded from questioning its validity. As held in ***Dhiyan Singh (supra)***, the issue of invalidity of the award, as a question of law, cannot be considered *de hors* the conduct of parties. In these facts, the ratio of decisions relied upon by the respondents do not further their case. Hence, this contention of the respondents fails.

19. We therefore find that on the doctrine of estoppel by conduct and election the respondents cannot be permitted to now raise a plea that the compromise deed based on the award dated 30.12.2022 was a nullity in view of the provisions of Section 92 of the Code. On this count, we do not deem it necessary to go into the legality of the award dated 30.12.2022 as was done by the Courts in the impugned orders.

20. It can be seen from the order passed by the Commercial Court on 24.05.2024 and thereafter by the High Court on 30.08.2024 that the effect of the compromise deed resulting into a decree has not been given its due importance. The conduct of the respondents of approbation by first accepting the award and having the appeal disposed of on that basis and thereafter of reprobation by setting up its invalidity has been lost sight of. The compromise deed was not challenged at any point of time by the respondents. The appellants sought to execute the decree as passed initially by filing execution proceedings on 23.11.2023. The same were however withdrawn on 08.12.2023. Thereafter jurisdiction under Section 9 of the Act of 1996 was invoked by the appellants. In our view, non-suiting the appellants on the ground that the award dated 30.12.2022 was a nullity in view of the objection raised by the respondents has resulted in grave injustice to the appellants. If the

impugned adjudication is accepted, the respondents would reap benefit from their act of approbation and reprobation. The respondents having succeeded in having a decree being passed on the strength of the arbitral award dated 30.12.2022 now cannot be permitted to contend that the award itself was a nullity. The justice of the case therefore requires that the appellants ought to be permitted to revive the execution proceedings that they had filed being Miscellaneous Case No. 122 of 2023. These proceedings were withdrawn shortly after being filed to enable the appellants to file the application under Section 9 of the Act of 1996 and there was no adjudication of the same on merits. In our view, the appellants cannot be left remediless especially in the backdrop of the fact that the compromise decree was passed in the respondents' appeal which remained unchallenged by them.

21. For aforesaid reasons, the order passed by the Commercial Court in Arbitration Suit No.25 of 2023 dated 24.05.2024 as well as the judgment of the Division Bench in Appeal No.356 of 2024 dated 30.08.2024 are set aside. The appellants are at liberty to revive the execution proceedings in the form of Miscellaneous Case No.122 of 2023. The execution proceedings shall be decided on their own merits and in accordance with law. The civil appeal is allowed in aforesaid terms leaving the parties to bear their own costs.

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