* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 05th May, 2022
Pronounced on: 20th May, 2022

\+ **FAO(OS) (COMM) 92/2022**

SH. SANJAY ROY ..... Appellant
Represented by: Mr. Lalit Bhardwaj & Mr. Jatin Anand Dwivedi, Advocates.

versus

SANDEEP SONI & ORS. ..... Respondents
Represented by: Mr. Rakesh Saini, Advocate for R-1.
Mr. Jai Sahai Endlaw& Mr. Ashutosh Rana, Advocates for R-2 & 3

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E NT

NEENA BANSAL KRISHNA, J.

1. This Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as A&C Act,1996*) read with Section 13 of Commercial Courts Act 2015, has been filed against the judgment and order dated 1st February, 2022, whereby the objections of respondent no.1 under Section 34 of A&C Act,1996 against the Award dated 2nd March, 2020, have been allowed and it is held that late Smt. Kalyani Roy was the absolute owner of the property in respect of which she had entered into a Collaboration Agreement with Respondent no.1 Shri. Sandeep Soni.

2. The facts in brief are that Shri Subhash Chand Roy, deceased father of the appellant and respondent nos. 2 to 4 i.e. Mrs. Gouri Sarkar, Mr.

Amitabho Roy & Mr. Partho Sarathi Roy, was the absolute owner of property bearing No. D-603, Chittaranjan Park, New Delhi-110017, admeasuring 160 sq. yards (*hereinafter referred to as the suit property*). Late Shri Subhash Chand Roy executed a Will dated 15th March, 1988, bequeathing the suit property in favor of his wife. He died on 30th January, 1991 and was survived by his wife Smt. Kalyani Roy and the children i.e. the appellant and respondent nos. 2 to 4.

3. The legal heirs, viz. appellant- Sh. Sanjay Roy and respondent No.2 to 4 gave a "No Objection" in favour of Smt. Kalyani Roy who got the property mutated in her name vide letter No. L&DO/PSII/280 dated 6th April, 1995. Subsequently, a Conveyance Deed dated 7th December, 2001 was also executed by the L&DO in favour of Smt. Kalyani Roy.

4. Smt. Kalyani Roy also executed a Will dated 30th March, 2016 wherein she bequeathed the suit property equally to the appellant and the respondents Nos.2 to 4 i.e. (i) Mrs. Gauri Sarkar (Daughter) (ii) Amitabho Roy (Son) (iii) Sanjay Roy (Son) (iv) ParthoSarthy Roy (Son, who left the house on 07.10.1999 subject to the condition that if he did not turn back within one year from the date of demise of Smt. Kalyani Roy, his 1/4th share shall devolve upon her following four grandchildren, namely: (a) Aditi Sarkar D/o Sh. Pronab Kumar Sarkar (b) Shibhani Roy D/ Sh. Sanjay Roy (c) Juimala Roy D/o SH. Sanjay Roy, and (d) Aditya Roy S/o Amitabho Roy.

5. Smt. Kalyani Roy died on 19.01.2017. During her lifetime, she entered into a Collaboration Agreement dated 9th August, 2016 with respondent no.1 as the owner of the suit property, according to which the property after demolition, was to be re-constructed and developed after

getting the building plan sanctioned from the concerned authority. The allocation of specific floors as well as schedule of payment was defined in the Collaboration Agreement. An amount of ₹25,00,000/-was also paid to Smt. Kalyani Roy by respondent no.1 in terms of the Collaboration Agreement. A Deed of Extension was entered into on 27.10.2016 revising the date of completion as 30.04.2017.

6. The appellant herein was aggrieved by the Collaboration Agreement on the premise that Smt. Kalyani Roy who was residing with respondent no. 2, was neither in possession of the property nor did she have any ownership right in the suit property to enter into the Collaboration Agreement as she was conferred only with a lifetime interest under the Will of her husband, late Shri Subhash Chand Roy. The entire documentation and Collaboration Agreement was manipulated by respondent no. 2 along with her husband, with whom Smt. Kalyani Roy was residing, in conspiracy with the sister and the other brothers namely respondent no.2-Mrs. Gouri Sarkar, respondent no. 3- Mr. Amitabho Roy and respondent no. 4- Mr. Partho Sarathi Roy. The appellant sent a Legal Notice dated 10th December, 2016 to respondent no. 2 and her husband Mr. P.K. Sarkar as they were the executors of the Will of Late Subhash Chand Roy, who instead of getting the Will probated, conspired with the respondents to sell the property, taking advantage of Smt. Kalyani Roy being sick and bed ridden.

7. The appellant who was in possession of the ground floor of the suit property filed a suit bearing no. 52736/2016 for injunction in which interim order was granted in favour of the appellant. An application under order 39 Rule 4 CPC was filed by respondent no. 1 for setting aside the interim stay order. In the meanwhile, the respondent no. 1 filed an application under

Section 11 of the Arbitration Act, 1996 vide Arbitration Petition No. 413/2017. The appellant also filed Suit No. 319/2018 for declaration of the Collaboration Agreement and the Supplementary Collaboration Agreement to be null and void. The parties were referred to arbitration.

8. Sh. Sandeep Soni, respondent No.1 claimed that the appellant and respondent no.2 to 4 being the legal heirs of Smt. Kalyani Devi were legally bound to honor the obligations of their mother. While respondent no.2 to 4 supported respondent no.1, the appellant (who was the respondent before the Ld. Arbitrator) contested the claim of respondent no.1.

9. The Ld. Arbitrator, after considering the claim and the counter claim of the parties, vide the impugned award dated 2nd March, 2020 concluded that in case of inconsistent clauses in the Will, the latter clause shall prevail and accordingly held Smt. Kalyani Roy to have been given a life interest and not full ownership in the property in question. Therefore, it was held that she was not competent to enter into the Collaboration Agreement with respondent No.1 during her lifetime. Thus, the reliefs sought by the respondent no. 1 were denied by holding that Smt. Kalyani Devi had acquired only a life interest under the Will dated 15th March, 1988 of her husband Shri. Subhash Chand Roy and could not have entered into the impugned Collaboration Agreement for re-construction of the suit property, with respondent No.1.

10. The Award was challenged vide OMP (COMM) no. 36/2021 under Section 34 of the Act, 1996 by respondent no.1, Shri. Sandeep Soni, the builder. The objections were allowed by the Learned Single Judge vide impugned judgement dated 1st February, 2022 and observed that the second part of the Will of Shri Subhash Chand Roy, though appears to be

contradictory to the first part, is easily reconcilable. The second part was to come into operation only if Smt. Kalyani Roy during her lifetime did not alienate or create third-party rights in the suit property which would be in line with the intention expressed by the testator for bequeathing the property to his children, if his wife had pre-deceased him. It was the intention of the testator to bequeath the property to his wife as absolute and without any limitation and it was only when she did not alienate or exercise ownership rights, then it was to devolve amongst the testator's children, after the lifetime of Smt. Kalyani Roy. It was further concluded that under no circumstances could it be held that Smt. Kalyani Roy was given a limited interest without power of alienation, to give such an interpretation as was the stance of the Learned Arbitrator, would amount to re-writing the terms of the Will. The second part of the Will had to be given effect to, in line with the general intention of the entire will, and not by invoking Section 88 of the Indian Succession Act. It was held that late Smt. Kalyani Roy was the absolute owner of the property and was competent to enter into the Collaboration Agreement with Respondent No.1 Shri. Sandeep Soni.

11. Aggrieved by the Order of Ld. Single Judge present appeal under Section 37 of the Act, 1996 has been filed.

12. The grounds of challenge are that the comprehensive reading of the Will as a whole, clearly reflects that that Shri**.** Subhash Chand Roy had intended to bequeath the suit property upon all the legal heirs and Smt. Kalyani Roy was to get life interest during her life time.

13. It is submitted by the Appellant that Section 74 of the Indian Succession Act, 1925 provides that where the terms of the Will are clear, then only such words must be interpreted to ascertain the intentions of the

testator. Section 82 of the Indian Succession Act, 1925 further provides that the meaning of any clause in a Will has to be gathered from the entire instrument and all its parts are to be construed with reference to each other. Moreover, Section 88 of the Indian Succession Act, 1925 provides that where two clauses of a gift or a will are irreconcilable and cannot stand together, then the later clause shall prevail. The Will should have been considered as a whole.

14. The Appellant further submitted that the learned single Judge failed to appreciate that in construing the language of the Will the Court should put itself in the armchair of the testator and be not guided by the mere words used in the Will. The surrounding circumstances, the position of the testator, his family relationship, the probability of using particular words in a particular sense must be considered, which the learned Single Judge has failed to do.

15. Further, the conclusion arrived at by the Ld. Arbitrator that the late Shri Subhash Chand Roy had bequeathed life interest in his property to his wife Smt. Kalyani Roy, is based on correct interpretation of Will of late. Sh. Subhash Chand Roy and its reversal by Ld. Single Judge under Section34 of the Act, 1996 suffers from patent illegality and is liable to be set aside and the order of Ld. Arbitrator should be restored to hold that Smt. Kalyani Roy had acquired only a life estate in the suit property under the Will of her husband.

16. Notice was issued to the respondent who appeared through the counsel.

17. Submissions heard.

18. The Respondent No.1 who is the Builder, had entered into a Collaboration Agreement with late Smt. Kalyani Roy, in respect of the suit property. Objection was raised by the appellant that Smt. Kalyani Roy was having a Life interest in the suit property by virtue of the Will dated 15thMarch, 1988 executed in her favour by her husband, Mr. Subhash Chand Roy which has to be honoured by the respondents no.2 to 4, being the legal heirs of Shri. Subhash Chand Roy and Smt. Kalyani Roy and she was not competent to enter into the Collaboration Agreement with the Respondent No.1.

19. The basic issue which has arisen for consideration is: *whether Smt. Kalyani Roy had acquired an absolute interest or life interest by virtue of the Will dated 15th March, 1988 of late Shri. Subhash Chand Roy.*

20. To understand the controversy, it would be pertinent to refer to the contents of the Will dated 15th March, 1988 of Shri Subhash Chand Roy, the relevant portion of which reads as under:

> *"I devise and bequeath mv three-storyed house No.603, constructedon plot of land measuring 160 sq. yds. Situated at ChittranjanPark,New Delhi, in favour of my wife Mrs. Kalyani Roy, who shallbecome the owner of the same with all rights, and privileges after mydeath only and shall get it transferred and mutated in her own namein the records of departments concerned.In case she pre-deceasesme then my above said property shall be inherited by (1) Mrs. GauriSarkar wife of Mr. Pranob Kumar Sarkar, who is my daughter, andmy three sons named (i) Sh. ParthaSarathi Roy (ii) Sh. Amitabh Royand (iii) Sh. Sanjay Roy, jointly and in equal shares, after my deathonly.*
>
> *xxx*
>
> *I further declare that in case my wife Mrs. Kalyani Roy dies afterme, then after her death my above said house*

> *shall be inherited bymy daughter Mrs. Gauri Sarkar wife of Mr. Pranob Kumar Sarkarwho is my daughter, and my three sons named (i) Sh. AarthaSarathRoy (ii) Sh. Amitabh Roy and (iii) Sh. Sanjay Roy, jointly and inequal shares, who shall be entitled to get the same transferred andmutated in their joints names in the records of the departmentsconcerned."*

21. The principles for interpretation of Will have been propounded by the Apex Court in its decision *in Shyamal Kanti Guha vs. Meena Bose (2008) 8 SCC 115*where it was explained that in case the two clauses of the Will are inconsistent and irreconcilable to each other, if it is possible to give effect to both the clauses which apparently appear to be irreconcilable, the Court must take recourse thereto.

22. *In RamkishorelalNarain vs. Kamal Narain AIR 1963 SC890*,the Hon'ble Supreme Court referred to the decision of the Bombay High Court in *Rameshwar Bakhsh Singh v. Balraj Kaur(1935) 37 BOMLR 862* and reiterated that a direction in the earlier disposition of an absolute right shall prevail and the latter directions of disposition should be disregarded as an unsuccessful attempt to restrict the title already given. Though an attempt should always be made to read the two parts of the document harmoniously if possible, but when it is not possible then the absolute title given in clear and unambiguous terms shall prevail and the latter provisions have to be held as void.

23. In *Madhuri Ghosh and Another Vs. Debobroto Dutta &Another*, *(2016) 10 SCC 805*, the question arose in regard to the construction of will. The principles were expounded for construction of Will. It was observed that where under a Will, a testator has bequeathed his absolute interest in a

property in favor of his wife, the subsequent bequest which is repugnant to this first bequest, would be invalid.

24. The Hon'ble Supreme Court in *M.S. Bhawani vs. M.S. Raghu Nandan (2020) 5 SCC 361* reaffirmed the decision in *Madhuri Ghosh* and propounded certain principles for the interpretation of the Will, that should be borne in mind while undertaking the construction of a will. At its very core, the exercise involves an endeavor to try and find out the intention of the testator. This intention has to be gathered primarily from the language of the Will, reading the entire document as a whole, without indulging in any conjecture or speculation as to what the testator would have done had he been better informed or better advised. In construing the language of a will, the Courts may look to the nature and the grammatical meaning of the words used, and also consider surrounding circumstances such as the position of the testator, his family relationship, and other factors that may surface once the Court puts itself in the position of a person making the will [see *Shyamal Kanti Guha (dead) through LRs v. Meena Bose, (2008) 8 SCC 115*].

25. It was held in *M.S. Bhawani*(supra) that once a testator has given an absolute right and interest in his entire property to a devisee, it is not open to the testator to further bequeath the same property in favour of the second set of persons in the same Will; a testator cannot create successive legatees in his Will. Once an absolute right is conferred on anyone, the subsequent bequest for the same property in favour of other persons would be repugnant to the first bequest and has to be held invalid.

26. Applying these principles, the Will of Shri. Subhash Chand Roy as a whole clearly reflects the intention of testator to bequeath his property to his wife Smt. Kalyani Roy as an absolute owner with all the rights and

privileges. This is further evident from the stipulation in the Will that after his death, she shall get it transferred and mutated in her own name. The clause of the Will is unambiguous, conferring the absolute right in the suit property to Smt. Kalyani Roy.

27. It is undoubtedly true that in the second part it is stated that after the death of Smt. Kalyani Roy the property would be inherited by his daughter Ms. Gauri Sarkar and the three sons namely, Mr. Amitabho Roy, Mr. Sanjay Roy & Mr. Partho Sarthy Roy jointly and in equal shares and they would be entitled to get the same transferred but as rightly pointed out by learned Single Judge that the question of inheriting the property by the children would have arisen only if Smt. Kalyani Roy had not alienated the property during her lifetime.

28. In the present case, Smt. Kalyani Roy had an absolute interest which is also evident from the fact that on the demise of Shri Subhash Chand Roy she got the property mutated in her name for which the appellant as well as the respondents No.2 to 4 submitted their "No Objections" before L&DO in the year 1994, acknowledging that their father had left a registered Will which was genuine, bequeathing the suit property in favour of Smt. Kalyani Roy and they were not disputing the title of Smt. Kalyani Roy to the property and that they had no objection to mutation of the property in her name. This irresistibly establishes that the appellant also acknowledged the intention of the testator in the Will of their father to confer the absolute right, title in the suit property to Smt Kalyani Roy and consequently took no objection to the mutation of the property in her name.

29. The mutation of the property took place in the year 1994 and the Conveyance Deed was executed in her name in the year 2001.The Will of

Mr. Subhash Chand Roy which was duly acted upon by Smt. Kalyani Roy as well as the children of Mr. Subhash Chand Roy and no challenge was raised in respect of the mutation or the Conveyance Deed till 2016 when the present litigation got initiated.

30. The right in favor of Smt. Kalyani Roy is crystallized; the challenge, if any, either to the Will or to the mutation/ Conveyance Deed could have been taken within 3 years and if the Conveyance Deed or the mutation or the Will has not been challenged, it cannot be agitated after 22 years from the day it was brought to effect.

31. This aspect came up for consideration in *Lata Chauhan Vs. L.S. Bisht &Ors. (2010) SC Online Del 2291*. The defendant in that case, disclosed about execution of a Perpetual Sub-Lease in 1967 creating interest in the property, in his favor, against which the plaintiff did not seek any declaratory relief or a decree for cancellation of the Registered Perpetual Sub Lease. It was held that even if the Court were to reasonably assume lack of knowledge about the Registered Perpetual Sub Lease of 1967 at the time of institution of suit, its subsequent disclosure on 12.01.1990 should have impelled the plaintiff to seek appropriate relief. Despite this, the plaintiff did not choose to amend the relief clause by either seeking a declaration in respect of the Registered Sub-Lease or cancellation of the documents. The period of limitation prescribed in this regard by Articles 58 and 59 of Limitation Act is three years after the cause of action arises. The Perpetual lease deed could have been challenged within three years of knowledge and if not so done the challenge would become time barred and the Lease Deed would remain valid.

32. In the three-Judge decision reported as *Ramti Devi (Smt.)v. Union of India, 1995 (1) SCC 198* the Apex Court held as follows*:*

> *"Until the document is avoided or cancelled by proper declaration, the duly registered document remains valid and binds the parties. So the suit necessarily has to be laid within three years from the date when the cause of action had occurred."*

33. It is trite law that no amount of evidence or argument in the absence of pleadings can be gone into by the Court. In *Trojan & Co. Ltd. V. Rm. N. N.NagappaChettiar, AIR 1953 SC 235*, the Supreme Court referred to the Privy Council decision in *Mahant Govind Rao v. Sita Ram Kesho and Ors., (1898) 25 IA 195 (PC)* and held that decisions cannot be founded on grounds outside the pleadings and what has to be considered or granted is the case pleaded. It was also held that without amendment of the pleading in light of facts disclosed or discovered subsequently, the Court would not be entitled to modify or alter the relief claimed. These rulings were followed in *Ram Kumar Barnwal v. Ram Lakhan (dead), 2007 (5) SCC 660.*

34. Thus, in the absence of any challenge to the registered Conveyance Deed in favour of the plaintiff, ever raised by the appellant in his pleadings or otherwise, it conferred absolute ownership rights in favour of Smt. Kalyani Roy, which is beyond challenge.

35. There is another aspect of the matter. Under Section 3 of the Transfer of Property Act, a person is said to have "notice" of a fact when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it. The first explanation to Section 3 reads as follows:

> *"Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose subdistrict any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:]"*

36. In *Dattatreya Shanker Mote v. Anand ChintamanDatar, 1975 (2) SCC 799* and followed in *Bina MurlidharHemdev & Ors. v. Kanhaiyalal LokramHemdev & Ors., (1999)5 SCC 222,* it was held that the registration of a document which is compulsorily registrable under law amounts to constructive notice on a person aggrieved by the title or interest created by such document.

37. The limitation for challenging the Deed is three years as per Article 59 of the Limitation Act**.** The Supreme Court, in *Mohd. Noorul Hoda v. Bibi Rafiunnisa & Ors., (1996)7 SCC 767* observed as under in regard to limitation:

> *"there is no dispute that Article 59 would apply to set aside the instrument, decree or contract between the inter se parties. When the plaintiff seeks to establish his right to the property which cannot be established without avoiding an instrument, that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party. The party necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside*

or rescinded. Section 31 of the Specific Relief Act, 1963 regulate suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or whatever and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or whatever and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would therefore be clear that if he seeks avoidance of the instrument, decree or contract and seek a declaration he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the instrument first became known to him."

38. Section 27 of the Limitation Act prescribes that upon expiration of the period of limitation provided, any person's right to sue for recovery of possession of immovable property is extinguished. It reads as follows:

> **"27. Extinguishments of right to property** - *At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."*

39. The Supreme Court in *Prem Singh and Ors. v. Birbal and Ors., AIR 2006 SC 3608* observed about the imperative nature of the provision, and held that:

> *"11. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.*
>
> *12. An extinction of right, as contemplated by the provisions of the Limitation Act, prima facie would be*

attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out or is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed…"

40. The appellant himself had given "No Objection" in favour of Smt. Kalyani Devi and was always in the knowledge of the Conveyance Deed and any challenge now to the ownership/ title of Smt. Kalyani Devi acquired by her by virtue of Conveyance Deed, is clearly time barred. The appellant took no steps to assert his rights at any point of time. In these circumstances, the supervening equity in favor of the respondents estops and bars the appellant from opposing the title of Smt. Kalyani Devi in the property in question.

41. The appellant never challenged the validity of the Conveyance Deed; rather he gave his "No Objection" in the year 1994 for mutation of property in favour of Smt. Kalyani Devi on the basis of which the Conveyance Deed was executed in her favour in 2000. Interestingly, even in the present proceedings, the Conveyance Deed and its genuineness has not been challenged nor is there any claim that it has been wrongly executed in favor of Smt. Kalyani Roy. The only plea now being set up is that she had acquired only life estate by virtue of the Will of her husband, who was admittedly the absolute owner of the property in question. Now the Conveyance Deed has attained finality and by virtue of this Conveyance

Deed. Smt. Kalyani Roy became the absolute owner of the suit property and thus, competent to enter into the Collaboration Agreement with the Respondent No.1.

42. The learned Single Judge has rightly held that Smt. Kalyani Roy had an absolute right in the suit property and findings of the learned Arbitrator contrary to the Will, were liable to be set aside being patently illegal.

43. Now the question which arises for consideration is whether it is within the scope of Section 34 to upset the findings of the learned Arbitrator. Section 34 of the Act, 1996, provides the ground for setting aside the domestic arbitral award if it is in conflict with "public policy of India". It has been explained that in conflict with public policy of India means (i) the award is induced or affected by fraud; or (ii) is in contravention with the fundamental policy of Indian Law; or (iii) is in conflict with the most basic notions of morality of justice.

44. In the decision of *Renusagar Power Co. Ltd. v. General Electric Co, 1994 Supp (1) SCC 644*, in construing the expression "public policy" in the context of a Foreign Award, the Apex Court held that an award which is in violation of the statute enacted to safeguard the national interest, shall be contrary to the public policy of India and the fundamental policy of Indian law. The contravention of law alone would not attract the bar of public policy and something more than contravention of law is required. Though the Apex court did not delve into the question of what course of inquiry should the courts adopt to ascertain if the award was in breach of the fundamental policy of Indian law, this is discernible from the finding that an award in violation of Foreign Exchange Regulation Act, 1973 (FERA), being a statute enacted to safeguard the national economic interest, shall be

contrary to the public policy of India and the fundamental policy of Indian law.

45. It was further observed in *Renusagar* (Supra) that disregarding the orders passed by superior courts would adversely affect the administration of justice and consequently an award passed in such disregard to orders of superior courts shall also be a violation of fundamental policy of Indian law.

46. In the decision of *Associate Builders v. DDA, (2015) 3 SCC 49*,the law as stated by the Supreme Court in *Renusagar(Supra)* was reiterated and further explained the concept of fundamental policy of Indian law was to include disregard of the decisions of the superior courts. The Supreme Court in the decision of *Ssangyong Engineering and Construction Company Limited v. NHAI, (2019) 15 SCC 131*, traced the scope of amendments based on the Law Commission Report and the statement of Objects and Reasons of the 2015 Amendment to give judicial interpretation of the term "fundamental policy of Indian law" and it was held that the expression "fundamental policy of Indian law" is relegated to the understanding of this expression as was defined in the case of *Renusagar*(Supra).

47. The Supreme Court in the decision of *Vijay Karia v. Prysmian Cavi E Sistemi SRL, (2020) 11 SCC 1*reaffirmed the principles and explained as under:

> "*Fundamental policy of Indian Law as has been held in Renusagar(Supra) must amount to a breach of some legal principle or legislation which is so basic to Indian law that it is not susceptible of being compromised. "Fundamental Policy" refers to the core values of Indian public policy as a nation, which may find expression not only in statutes but*

also time-honoured, hallowed principles which are followed by the courts".

48. From these observations of the Supreme Court in *Vijay Karia* (supra) it is evident that mere violation of any enactment shall not be a breach of fundamental policy of Indian law unless the same comprises of the most basic substratal values and principles forming the basic policy of laws in the country.

49. In the present case, as already discussed above, the learned Arbitrator failed to apply the basic fundamental law as contained in the Limitation Act, 1963; Transfer of Property Act, 1882 and was also not in consonance with judicial decisions and principles as laid down by the courts of India. This necessarily leads to the conclusion that the findings of the learned Arbitrator were in breach of the fundamental policy of Indian law. The learned Single Judge thus, rightly held that the grounds of challenge fell within the scope of Section 34 and has rightly set aside the arbitral award.

50. There is no infirmity in the findings of the learned Single Judge. The present appeal is hereby dismissed.

CM APPL. 20177/2022 (Stay)

1. In view of the judgment passed in the appeal, the application is disposed of as infructuous.

(NEENA BANSAL KRISHNA)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY20, 2022/pa