Reserved On : 29/07/2025
Pronounced On : 13/10/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1903 of 2022
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2022
In R/FIRST APPEAL NO. 1903 of 2022
With
CIVIL APPLICATION (FOR AMENDMENT) NO. 2 of 2025
In R/FIRST APPEAL NO. 1903 of 2022
With
R/FIRST APPEAL NO. 227 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In R/FIRST APPEAL NO. 227 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and
HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
	✔	

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TITHI CHANDRAJIT SHAH
Versus
RAJENDRABHAI ALIAS SAMIRBHAI NATVARLAL SHAH & ORS.

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Appearance in FIRST APPEAL NO. 1903 of 2022:
MR.GAUTAM JOSHI, SENIOR COUNSEL WITH MR.PARTH D. PATEL for the Appellant
MR. D.C.DAVE, SENIOR COUNSEL WITH MR.ANAL S. SHAH, fpr the Respondent(s) No.2, 3, 4.
MR.NILESH A. PANDYA for the Respondent No.5.
MR.AKASH R. PATEL for the Respondent No.6.

Appearance in FIRST APPEAL NO. 227 of 2023:
MR.MEHUL S. SHAH, SENIOR COUNSEL WITH MR.AKASH R. PATEL for the Appellant
MR.RAKESH R. VYAS for the Respondent No.1

MR.MIHIR JOSHI, SENIOR COUNSEL WITH MR.ANAL S. SHAH for the Respondent Nos.2, 3, 4.

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CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR.JUSTICE D.N.RAY

CAV JUDGMENT

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. The above referred two connected appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 (in short, “the Act’ 1996”) are arising out of two separate orders of the same date, i.e. 04.12.2021, passed by the Additional District Judge, Vadodara in Civil Misc. Application (Arbitration) No.63 of 2021 and Civil Misc. Application No.300 of 2021.

2. The above noted Civil Misc Application (Arbitration) No.63 of 2021 and Civil Misc. Application No.300 of 2021 were filed under Section 34 of the Act’ 1996 to challenge the arbitral award dated 03.06.2016, which was passed by the three member Arbitral Tribunal incorporating the consent terms / settlement agreement arrived between the parties to the arbitral proceedings.

3. It may also be pertinent to note, at this juncture itself, that both the applications under Section 34 of the Act’ 1996 filed by the appellants herein (two in number) were rejected on the ground of limitation, while allowing the application preferred by the opposite parties therein / respondents

herein, raising preliminary objection regarding the limitation apart from the jurisdiction and estoppel in respect of the said applications.

4. It was the specific case of the respondents herein before the Court under Section 34 that the application filed by the appellants herein under Section 34 of the Act' 1996 were not maintainable as the arbitral award sought to be impugned is a consent award resulting from the consensus for the same arrived at by and between the parties thereto including the applicants / appellants herein.

5. Having heard the learned counsels for the parties and perused the record, noticing that the dispute raised in the present set of two appeals filed under Section 37 of the Act' 1996 are arising out of the common arbitral award dated 03.06.2016, which was a consent award, we find it fit and proper to decide both the appeals together by this common judgment. The further reason being that the facts relevant to decide the controversy on hands are common for both the appeals. It may also be pertinent to note, at this juncture, that the appellants herein namely Ms.Hetalben Chandrajit Shah and Ms.Tithi Chandrajit Shah are wife and daughter of Mr.Chandrajit Natwarlal Shah, who is one of the signatories to the consent terms / settlement agreement dated 19.05.2016 and, the arbitral award dated 03.06.2016 incorporating the said consent terms / settlement agreement.

6. The respondents in both the appeals are common. The respondent Nos. 1 to 4 are the deceased Rajendrabhai @

Samirbhai Natwarlal Shah (as respondent No.1) and the respondent Nos. 2 to 4 are heirs and legal representatives of the deceased Rajendrabhai @ Samirbhai Natwarlal Shah. The respondent No.5 in both the appeals is Chandrajitbhai Natwarlal Shah, the husband and father of the two appellants herein. The appellants herein have been impleaded as respondent Nos. 6 and 7 in their respective appeals being the family members of Chandrajitbhai Natwarlal Shah, namely the respondent No.5. One Jaymit Chandrajitbhai Shah is impleaded as the respondent Nos. 6 and 7 in two respective appeals being the son of Chandrajitbhai Natwarlal Shah. Meaning thereby, the respondent Nos.5 and 7 in both the appeals are wife and children of Chandrajitbhai Natwarlal Shah.

7. The dispute is about the ancestral properties and businesses inherited by two brothers namely Rajendrabhai @ Samirbhai Natwarlal Shah (deceased respondent No.1) and Chandrajitbhai Natwarlal Shah (respondent No.5) from their father namely Shri Babulal Tribhovandas Shah. We have heard learned Counsels for the parties at length and perused the record. Both the appeals have been heard together and are being decided by this common judgment. The relevant facts to deal with the controversy on hands are that on account of certain disputes / differences arose between the two brothers namely the respondent Nos.1 and 5 herein with regard to the management and operation of the joint businesses and also regarding the share / right and interest in the immovable properties acquired and held jointly, they decide to resolve the *inter se* disputes and / or differences

amicably. As a result of this, a mutual agreed terms in a handwritten document was prepared in Gujarati language and was signed by the respective parties in the presence of mediators and it was decided that a formal agreement be prepared by an advocate / solicitor and be executed containing all terms and conditions and the procedure of division of businesses and properties. A Memorandum of Agreement (MOA) / Family Arrangement, thus, came to be executed on 02.01.2014 in the presence of the three witnesses.

8. A perusal of the document of MOA / Family Arrangement dated 02.01.2014 from the paper-book indicates that two sets of parties namely, the family members of Rajendrabhai @ Samirbhai Natwarlal Shah (his wife, children and daughter-in-law) and also the family members of Chandrajitbhai Natwarlal Shah (and his wife and children) were represented as two groups namely, “Rajendrabhai Group” and “Chandrajitbhai Group”, which meant to include their respective heirs, legal representatives, administrators, executors, successors, assignees, etc. The statement in the MOA indicates that two appellants herein namely, Hetalben Chandrajitbhai Shah, wife of Chandrajitbhai and Ms.Tithi Chandrajitbhai Shah, daughter of Chandrajitbhai Shah were represented as parties to the MOA, belonging to “Chandrajitbhai Group”. The MOA categorically records that “Rajendrabhai Group” and “Chandrajitbhai Group” shall be collectively referred to as the “parties” and individually as “party”, in the MOA / Family Arrangement.

9. The categorical statement in the family arrangement dated 02.01.2014 are that Rajendrabhai Natwarlal Shah and Chandrajitbhai Natwarlal Shah are brothers. The members of each group are related to each other as husband, wife, son, daughter and / or daughter-in-law, as the case may be; and are also related to the members of other group. “Rajendrabhai Group” and “Chandrajitbhai Group”; and are having joint businesses which were being carried out through private limited company and partnership firms established by them. Both the groups are holding several immovable properties and / or right or interest in immovable properties situated in and around Vadodara District. The details of joint businesses and immovable properties held by both the groups jointly are mentioned in the MOA.

10. It further records that with a view to maintain family peace and harmony as well as family status and dignity, both the parties have decided to resolve their *inter se* disputes and / or differences amicably. At the instance of the well wishers and other relatives, Rajendrabhai Natwarlal Shah and Chandrajitbhai Natwarlal Shah, on behalf of their respective family members, had initiated mutual discussions for resolving the disputes and / or differences. Some relevant clauses of MOA are to be extracted hereinunder:-

> “**N.** Both Rajendrabhai Group and Chandrajitbhal Group have in principle agreed for division of joint businesses and division of Joint Properties in order to avoid disputes and/or differences in future.
>
> **O.** The parties have arrived at a consensus/understanding regarding the broad modalities for division of joint businesses and Joint Properties and the parties have decided to enter into and

execute this MOA-Family Arrangement to record the consensus/understanding arrived at for division of joint family businesses/properties to avoid any confusion and consequently any disputes in future and also to undertake the process for division of the joint businesses/Joint Properties.

NOW THIS MOA WITNESSES and the parties agree as follows:-

1. The parties have decided to divide the joint businesses and Joint Properties in such manner that each party gets exclusive ownership and control of separate/distinct business and property without there being any co-interest or share or right of the other party in the same business or property."

"**26.** The parties acknowledge and confirm that each party has the power, authority and legal competency to enter into this MOA-Family Arrangement.

27. The parties hereto acknowledge that they may be having right, title or Interest in the joint family businesses and properties in different capacities such as Shareholder, Director, Partner, Co-owner, member/coparcener of joint family or any other capacity as may be appearing on record. The parties agree that understanding is arrived at and this MOA is executed in all and every capacity, in which they and each of them may be represented, indicated or identified in the joint family businesses or properties.

28. This MOA is a Composite Family Arrangement and is legally binding on the parties. Nether party shall have the power or authority to reject or accept the same, in part or parts.

29. Any dispute and/or difference arising out of this MOA-Family Arrangement including any dispute/difference relating to the scope, effect, execution, interpretation and implementation of this MOA-Family Arrangement shall be settled by way of mediation by Shri Akshaybhal Arvindbhal Kothari, Shri Vikrambhal Ugarchand Shah and Shri Prashant Bipinchandra Shah. The decision by majority shall be final and binding upon the parties. Each party shall be entitled to appear to through Advocate or duly authorised representative. The language of proceedings shall be in English. The proceedings of mediation shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendment, modification or reenactment thereof."

11. It may also be pertinent to note that one of the appellants herein namely, Hetalben Chandrajit Shah, wife of Chandrajitbhai Natwarlal Shah is signatory to the MOA dated 02.01.2014 and another appellant namely, Tithi Chandrajit Shah was represented by her father namely, Chandrajitbhai Natwarlal Shah being minor. As is evident from the Clause '26' of the MOA / Family Arrangement, extracted hereinabove, the parties to the MOA had acknowledged and confirmed that each party (Group namely "Rajendrabhai Group" and "Chandrajitbhai Group") had the power, authority and legal competence to enter into the family arrangement, to deal with the rights of the other parties and the joint family businesses and immovable properties of the joint family. The MOA dated 02.01.2014 was a composite family arrangement to resolve the disputes and differences between the two groups, i.e. family members of two brothers namely Rajendrabhai and Chandrajitbhai.

12. It seems that even the family arrangement / MOA dated 02.01.2014 was part implemented, but the disputes still remained alive. The "Chandrajitbhai Group" filed Special Civil Suit No.597 of 2014 against the "Rajendrabhai Group" before the Court of Civil Judge, Senior Division, Vadodara praying, *inter alia* for a declaration, permanent injunction, partition and cancellation of certain documents. On an application under Section 8 of the Arbitration and Conciliation Act' 1996, vide order dated 12.12.2014 passed by the Civil Court, while allowing the said application, the disputes raised in the aforesaid suit were referred to arbitration. Aggrieved,

"Chandrajitbhai Group" along with the appellants herein, i.e. Hetalben Shah being the co-petitioner challenged the order dated 12.12.2014 before this Court by way of Special Civil Application No.27 of 2014. The said writ petition was dismissed vide judgment and order dated 08.05.2015. A Special Leave to Appeal (C) No. 9160 of 2015 was filed before the Apex Court, which was also dismissed on 03.08.2015. After dismissal of the Special Leave Petition, "Rajendrabhai Group" invoked the arbitration clause by appointment of their nominee arbitrator, calling upon the "Chandrajitbhai Group" to appoint their arbitrator within 30 days from the receipt of the letter dated 31.08.2015. In response thereto, "Chandrajitbhai Group" appointed Shri. Induben Natwarlal Shah (mother of Respondent Nos. 1 and 5 herein) as their nominee arbitrator vide communication dated 29.09.2015.

13. However, the nominee arbitrators could not agree on the name of the Presiding Arbitrator and hence, "Rajendrabhai Group" filed Arbitration Petition No.78 of 2015 under Section 11 of the Act' 1996 for appointment of the Presiding Arbitrator. Pertinent is to note that the notice issued by this Court in the petition under Section 11 of the Act' 1996 was served upon the "Chandrajitbhai Group" and was received by appellant Tithi Chandrajit Shah on behalf of the four members of the "Chandrajitbhai Group" namely, Chandrajitbhai Shah, Hetalben Chandrajit Shah, Jaymit Chandrajit Shah and Tithi Chandrajit Shah on 19.11.2015. The signatures of Tithi Chandrajit Shah on the notice could be seen at page No.'94'of the paper-book filed on behalf of the appellants in First Appeal

No.1903 of 2022. It may also be pertinent to note that the appellant Tithi Chandrajit Shah was major at the relevant point of time. The arbitration petition came to be disposed of vide order dated 22.01.2016 appointing a former Judge of the Supreme Court of India to act as a Presiding Arbitrator.

14. After the constitution of the three member Arbitral Tribunal, the arbitration proceedings commenced and the first arbitral meeting was held on 25.02.2016. It may also be pertinent to note that Hetalben, wife of Chandrajit Shah, one of the appellants herein was present in the two arbitral meetings held on 25.02.2016 and 29.03.2016.

15. In the third and fourth arbitral meetings, the arbitral Tribunal attempted to bring about an amicable settlement of all disputes referred to arbitration. After deliberations, the heads of both the groups namely, “Rajendrabhai Group” and “Chandrajitbhai Group” agreed to settle the disputes and an agreement had been arrived and signed by both the heads of the groups namely Rajendrabhai Natwarlal Shah and Chandrajitbhai Natwarlal Shah on behalf of their family members. This settlement agreement drawn in writing on 19.05.2016, signed by heads of both the groups formed the basis of passing of the consent award dated 03.06.2016 by the three member Arbitral Tribunal.

16. A perusal of the settlement agreement dated 19.05.2016 on record indicates that it was noted therein that by a MOA / Family Arrangement dated 02.01.2014, the parties had agreed to settle the disputes and divide the properties as per the said

agreement. However, some disputes continued under some misrepresentation / misunderstanding and after due deliberations, parties had agreed to settle the said disputes before the Arbitral Tribunal. The settlement agreement signed by Chandrajitbhai Natwarlal Shah for the claimants and Rajendrabhai Natwarlal Shah for the respondents record that both the parties had agreed to the consent terms as agreed by the Memorandum of Agreement dated 02.01.2014, subject to the modifications, as recorded in the settlement agreement itself and that they would jointly request the arbitral Tribunal to pass a consent award in the said terms.

17. The consent award dated 03.06.2016 also recorded that by MOA / Family Arrangement dated 02.01.2014, the disputing parties divided the joint businesses and joint properties in such manner that each party gets exclusive ownership and control of separate – distinct business and property without there being any co-interest or share or right of the other party in the same business or property. The said MOA was executed by the parties in the presence of the witnesses named therein. However, on some differences remaining between them, the arbitral Tribunal was constituted and in the third arbitral meeting dated 19.05.2016, the learned counsels for the parties and the parties present before the Arbitral Tribunal submitted that the Tribunal may proceed in further to discuss as to how to settle the disputes between the parties. The consent award further records in paragraph No.’11’ as under:-

"11. After long discussion and due deliberations and with the assistance of the Tribunal & learned Counsel for the respective parties, both the parties agreed to amicably settle the disputes arising between them. Both the Group Heads, i.e. Mr. Chandrajitbhai Natvarlal Shah (representing himself and his family members) and Mr. Rajendrabhai alias Samirbhai Natvarlal Shah (representing himself and his family members) have signed the Settlement Agreement (Consent Terms) dated 19th May, 2016. They have agreed the terms of the said Settlement Agreement and have prayed for passing the Consent Award. Learned Counsel for the Claimants, Mr. Nitin J. Bhavsar and learned Counsel for the Respondents, Mr. Anal S. Shah have also signed the said Settlement Agreement (Consent Terms) and have stated that the said Settlement Agreement would bind to each party.

For this purpose, a settlement agreement (consent terms) duly signed and counter-signed by the learned Counsel for the parties, was presented before this Tribunal which was taken (Annexure: A). The terms of the said Settlement Agreement are as under:-

> "The parties herein submitted to arbitration and with the assistance of the Hon'ble Tribunal and learned Counsel of the respective parties, they have agreed to amicably settle the disputes arising in the subject proceedings.
>
> In this arbitration proceeding, the Claimants and Respondents are the family members. The Claimant No.1 and the Respondent No.1 are the real brothers. By Memorandum of Agreement (MoA) dated 02nd January, 2014, the parties have agreed to settle the disputes and divided the properties as per the said agreement. However, on one or the other grounds, the disputes continued and the Claim Petition was filed raising contention that MoA, was executed under some misrepresentation / misunderstanding. After due deliberations, parties have agreed to settle the said disputes before the Arbitral Tribunal….."

18. The award declared, thus, is under:-

"i. Order in terms of the Settlement Agreement, as recorded above. Parties to act as per the consent terms duly signed and counter-signed by learned Counsel for the parties which are at Annexure: A to this Award.

ii. Claim petition stands disposed of. There shall be no order as to costs."

19. It is this consent award dated 03.06.2016, which was subjected to challenge at the instance of two members of "Chandrajitbhai Group" namely, Hetalben, wife of Chandrajitbhai Natwarlal Shah and Tithi, daughter of Chandrajitbhai Natwarlal Shah, by filing applications under Section 34 of the Act' 1996 separately. As is evident from the description of the said applications noted hereinabove, both the applications were filed sometime in the year 2021 and have been rejected on the ground of being beyond limitation on a preliminary objection taken by the respondents, i.e. members of the "Rajendrabhai Group".

20. Before proceeding further to deal with the arguments of the learned counsels for the parties, we are required to take note of the two documents, placed on record, one of which is the General Power of Attorney dated 11.06.2013 executed by appellant Hetalben Shah in favour of her husband namely, Chandrajitbhai Shah. It is the case of the respondents herein that the said Power of Attorney remained in force and had never been revoked or canceled by Hetalben Shah. The second document is the General Power of Attorney executed by appellant Tithi Chandrajitbhai Shah dated 01.08.2016 in favour of her father namely, Chandrajitbhai Natwarlal Shah. A bare reading of the power of attorney dated 01.08.2016 executed by Tithi Chandrajit Shah (the appellant in the First Appeal No.1903 of 2022) indicates that she had appointed her father, Chandrajitbhai Natwarlal Shah as her power of

attorney to defend any suit regarding her joint interest or coparcenaries properties and / or her partnership firm and regarding the family dispute of the joint properties for being subject matter of Special Civil Suit No.597 of 2014, which was referred to Arbitral Tribunal and also regarding the award of Arbitral Tribunal, giving authority to her father to do all the acts, things and deed, pertaining to her joint interest properties or coparcenaries or ancestral properties and her partnership firm on her behalf and in her name, and to do or execute or any of the acts or things in connection with the said suit. Some of the clauses of the General Power of Attorney executed by Tithi Chandrajit Shah authorizing her father read as under:-

> "**1.** To engage or appoint any legal practitioner to conduct and to tile, and to proceed with the said case or dispute before the court or arbitral tribunal, and Arbitral Award passed in the same.
>
> **7.** To file an application for execution of a decree or order or reward passed in the said suit and Arbitration proceedings, and to sign and verify such application.
>
> **12.** Generally to do all and every lawful acts necessary for the conduct of any case or dispute referred to Arbitral Tribunal, or Pending in any Court.
>
> **24.** To say, settle, a adjust, compound, submit to Arbitration and to compromise all suits, and other legal proceedings, accounts, claims and demands whatsoever which now are or hereafter be pending between me and any person or persons in such manner and in all respects as my said attorney may thing fit and proper.
>
> **25.** For the purpose of any aforesaid acts, to appoint advocates and Attorneys and to sign Vakalatnama or appearance in my behalf and to pay fees of such advocates and attorneys other out of pocket expenses."

21. On a query made by the Court, the learned Senior Counsels appearing for the appellants could not dispute the

factum of execution of the power of attorney dated 11.06.2013 by the appellant in First Appeal No.227 of 2023 namely, Hetalben Chandrajit Shah in favour of her husband, Chandrajitbhai Natwarlal Shah and also the appellant of First Appeal No.1903 of 2022, namely Tithi Chandrajit Shah in favour of the head of “Chandrajitbhai Group” who had signed the MOA / Family Arrangement dated 02.01.2014 and the settlement agreement dated 19.05.2016 (arrived in the arbitral proceeding). There is also no dispute about the fact that the consent award dated 03.06.2016 was signed by Chandrajitbhai Shah on his behalf and on behalf of his family members. There is also no dispute about the fact that the signed copy of the consent award was duly served upon with Chandrajitbhai Natwarlal Shah, the signatory of the consent terms and also the consent award, and that he had never disputed the same before any Court of law.

22. With these facts set out from the records of the two connected appeals, we may proceed to deal with the arguments of the learned Senior Counsels for the parties.

23. Mr.Gautam Joshi, the learned Senior Advocate assisted by Mr.Parth D. Patel, the learned advocate for the appellant (Tithi C. Shah) in First Appeal No.1903 of 2022 stranuously argued that the Commercial Court has erred in rejecting the application under Section 34 on the issue of limitation, i.e. the application being beyond the time prescribed under Section 34(3) of the Act’ 1996. It was submitted that in view of the clear language employed in Sub-section (3) of Section 34, the time period of three months prescribed to file an application

for setting aside an arbitral award would reckon from the date on which the party making the application had received the arbitral award. Section 31 (5) of the Act' 1996 mandates that a signed copy of the arbitral award shall have to be delivered to each party. Insofar as Tithi C. Shah, the applicant / appellant herein is concerned, she was not a party to the consent terms, which is the basis of passing the consent award dated 03.06.2016. Reliance is placed on the decision of the Apex Court in the case of **State of Maharashtra v. ARK Builders (P) Ltd.,** ***[(2011) 4 SCC 616]*** to substantiate the said submission.

24. It was vehemently argued that the Apex Court has laid down the legal principle on the issue as to when the period of limitation for making an application under Section 34 of the Act' 1996 for setting aside an arbitral award is to reckon. The question before the Apex Court was as to whether the limitation would reckon from the date a copy of award is received by the objector by any means and from any source, or it would start running from the date a signed copy of the award is delivered to such party by the Arbitrator.

25. While answering the said question, the Apex Court has held in no uncertain terms that, the period of limitation prescribed under Section 34(3) of the Act would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside under Section 34(1) of the Act. It was held that when the law prescribes that a copy of the award is to be communicated, delivered to the parties concerned in a

particular way and since the law also sets a period of limitation for challenging the award by the aggrieved party, then the period of limitation can only commence from the date on which the award was received by the party concerned in the manner prescribed by the law. Section 31(5) contemplates not merely the delivery of any kind of a copy of the award but a copy of the award that is duly signed by the members of the Arbitral Tribunal. It was held by the Apex Court therein that reading the two provisions together, namely Sections 31(5) and 34(3) of the Act'1996, it is quite clear that the limitation prescribed under Section 34(3) would commence only from the date a signed copy of the award is delivered to the party making the application for setting it aside.

26. With the aid of the decision of the Apex Court in the case of **Union of India v. Tecco Trichy Engineers & Contractors, *[(2005) 4 SCC 239]***, it was argued that the delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance, inasmuch as, only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several period of limitation in the scheme of the Act. As the delivery of the copy of award has the effect of conferring certain rights on the party including the right to file an application for setting aside the award under Section 34 (3), as also bringing to an end the right to exercise those rights on expiry of the prescribed

period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.

27. It was vehemently argued that even though the Apex Court had noticed therein that the appellants may be deriving undue advantage due to omission of the Arbitrator to give them a signed copy of the award though the respondent claimants had supplied a copy of the award to the appellants but that would not change the legal position. The judgment and order of rejection of the application under Section 34 of the Act' 1996 on the ground of limitation passed by the Principal District Judge therein had been set aside and the matter was remanded back to decide on merits.

28. With the aid of the said decision of the Apex Court, it was vehemently argued by the learned Senior Counsel for the appellant namely, Tithi C. Shah that the facts and circumstances of the case of the appellant are similar, inasmuch as, the appellant has never been supplied with the signed copy of the arbitral award and she has come to know about the arbitral award only after the copy of the same was provided by her parents. The limitation to file application under Section 34 for setting aside of arbitral award, thus, has never commenced and as such, application under Section 34 could not have been rejected by the Commercial Court.

29. It was further argued by Mr.Gautam Joshi, the learned Senior Counsel for the appellant – Tithi C. Shah that the

preliminary objections were only on the issue of jurisdiction and, as such, the limitation issue could not have been adjudicated by the Court under Section 34 throwing out the appellants summarily.

30. The submission, thus, is that the judgment and order dated 04.12.2021 passed by the District Court, Vadodara in allowing Exhibit '9' namely, the preliminary objection raised by the respondent in the proceedings under Section 34 of the Act' 1996 [Civil Misc. Application (Arbitration) No.63 of 2021], is liable to be set aside and the matter is to be remitted back for fresh consideration on the merits of the case of the parties.

31. Mr.Mihir Joshi, the learned Senior Counsel for the respondents in the First Appeal No.227 of 2023, apart from placing the abovenoted facts from the record of the appeal, would submit that the application under Section 34 filed by the daughter of Chandrajitbhai Natwarlal Shah seeking to set aside the consent award is nothing but a failed attempt by one of the members of the family represented by Chandrajitbhai Natwarlal Shah of "Chandrajitbhai Group" to unsettle the family arrangement arrived at between the parties on 02.01.2014, which formed basis of the consent terms signed on 19.05.2016 by the heads of both "Rajendrabhai Group" and "Chandrajitbhai Group", and has led to the passing of the consent award dated 03.06.2016.

32. The submission is that Tithi C. Shah namely the appellant herein was not only aware of the arbitral

proceedings but also authorized her father by giving a General Power of Attorney dated 01.08.2016 after declaration of the award, wherein she had authorized her father to do all acts with regard to the arbitral award of the Arbitral Tribunal. In the light of the clear authorization given by Tithi C. Shah, the appellant herein to her father namely Chandrajitbhai Natwarlal Shah by General power of attorney dated 01.08.2016, the appellant cannot be permitted to raise any grievance with regard to the non-supply of signed copy of the award to her, as a party to the arbitral proceeding.

33. Considering the above, suffice it to record that from the contents of the consent terms dated 19.05.2016 signed by the heads of both the “Rajendrabhai Group” and “Chandrajitbhai Group” before the Arbitral Tribunal, it is evident that two brothers namely, Rajendrabhai Natwarlal Shah and Chandrajitbhai Natwarlal Shah were representing their family members including their wife and children in the matter of settlement of joint properties and joint businesses. The fact that a MOA / Family Arrangement has been arrived at between the two groups represented by Rajendrabhai and Chandrajitbhai as heads of the said groups, makes it clear that the family members of Chandrajitbhai Natwarlal Shah including the appellant Tithi C. Shah was duly represented before the Arbitral Tribunal through Mr. Chandrajitbhai Shah. It would not make any difference that on the date of signing of the family arrangement dated 02.01.2014, Tithi C. Shah was a minor and she became major in the interregnum. The reason being that the family arrangement dated 02.01.2014 has been

duly acted upon by the members of the two groups namely, “Rajendrabhai Group” and “Chandrajitbhai Group” and the said family arrangement further formed the basis of the consent agreement signed by both the groups on 19.05.2016, which was further transcribed into the arbitral award dated 03.06.2016.

34. As noted hereinbefore, both the consent terms dated 19.05.2016 and the consent award dated 03.06.2016 were signed by Rajendrabhai as head of the “Rajendrabhai Group” for all claimants, i.e. members of his family and, on the other hand, by Chandrajitbhai as representative of all the members of his family being head of the “Chandrajitbhai Group”. In this scenario, neither there was any occasion for the learned Arbitral Tribunal to send a signed copy of the award to each of the family members of two groups nor there was any such requirement. The insistence of the learned Senior Counsel for the appellant (Tithi C. Shah) on the service of signed copy of the award upon the appellant in light of the provisions of Section 31 (5) of the Act’ 1996, does not appeal to us in the facts and circumstances of the present case.

35. The words “each party” under Sub-section (5) of Section 31 of the Act’ 1996 is to be understood and applied in the facts of the present case, where “each party” would mean the representatives of two groups namely, “Rajendrabhai Group” and “Chandrajitbhai Group”. There is no dispute about the signed copy of the arbitral award having been delivered upon Chandrajitbhai, the representative of the “Chandrajitbhai Group” of which the appellant Tithi C. Shah is one of the

members. The limitation for filing application under Section 34 of the Act' 1996 would, thus, reckon from the date of delivery of the signed copy of the award upon Chandrajitbhai, the head of the "Chandrajitbhai Group", who was representing the appellant namely, Tithi C. Shah, member of the said group, before the Tribunal.

36. The fact that the consent terms dated 19.05.2016 were not signed by the appellant namely, Tithi C. Shah would not be relevant in the facts and circumstances of the present case. As rightly held by the Court in the judgment and order impugned dated 04.12.2021 for rejecting the application under Section 34 that the dispute between the two groups, who are the blood brothers representing their family members before the Arbitral Tribunal was resolved by a consent award, the same would be binding on all the parties and hence, the challenge to the consent award cannot be sustained. The Court, while rejecting the application under Section 34 on the preliminary objections filed by the respondents about the maintainability of the challenge, has rightly held that the dispute of the parties to the arbitral proceedings could be resolved very well by the Arbitral Tribunal, inasmuch as, since the beginning, i.e. signing of the MOA / Family Arrangement dated 02.01.2014, all the parties were trying to resolve their disputes amicably. The further litigations to challenge the consent award on the technical grounds cannot be sustained in the eye of law, inasmuch as, the dispute is resolved through consent arbitral award.

37. It is, thus, evident that while allowing the preliminary objection filed by the opposite parties, namely members of the "Rajendrabhai Group" by Exhibit '9', the Court under Section 34 has also taken note of the merits of challenge to the consent award, and not only the question of limitation in filing the application under Section 34. It is evident that the application under Section 34 has been rejected both on the ground of limitation and also that the challenge to the consent award cannot be sustained at the instance of one of the family members of "Chandrajitbhai Group", who was already represented by her father namely, Chandrajitbhai, i.e. the appellant Tithi C. Shah.

38. In view of the above discussion, we do not find any merit in the challenge to the order dated 04.12.2021 passed by the 6th Additional District Judge, Vadodara in allowing Exhibit '9' application of the opponents raising preliminary objection to the entertainability / maintainability of the application under Section 34 of the Arbitration and Conciliation Act' 1996 registered as Civil Misc. Application (Arbitration) No.63 of 2021. The challenge to the consent award dated 03.06.2016 on the ground that the consent terms dated 19.05.2016 had not been signed by Tithi C. Shah, the appellant herein though she was a major, cannot be sustained.

39. Moreover, in view of the general power of attorney dated 01.08.2016 executed by Tithi C. Shah, the appellant herein, after approximately two months of the arbitral award, giving power to her father namely. Chandrajitbhai Natvarlal Shah to proceed with the cases or disputes before the court or arbitral

tribunal and also pertaining to arbitral award, the submission of the appellant that she came to know about the arbitral award only in December 2020 when the copy of the arbitral award was received by her from her parents, is absolutely false.

40. Coming to the case of the appellant – Hetalben C. Shah in First Appeal No.227 of 2023 to challenge the consent award dated 03.06.2016 made by the Arbitral Tribunal and the challenge to the decision of the Court dated 04.12.2021 in rejection of the application under Section 34 of the Act' 1996 on preliminary objection raised by the opposite parties / respondents herein, suffice it to note that that Hetalben C. Shah, the appellant had executed a General Power of Attorney on 11.06.2013 giving power to Chandrajitbhai (her husband) for legal proceedings including power to submit claims to arbitration. The copy of the General power of attorney, part of the paper-book of the respondent, has been placed before us to demonstrate that the appellant – Hetalben had given power to do all acts in her name and on her behalf, to her husband namely, Chandrajitbhai N. Shah by appointing him as her lawful attorney.

41. Nothing has been submitted before us to demonstrate that the said power of attorney was cancelled or revoked by the appellant Hetalben prior to the consent terms drawn on 19.05.2016, which has been incorporated in the consent award dated 03.06.2016.

42. There is one more relevant factor with regard to appellant Hetalben, which is to be taken note of. A perusal of the MOA / Family Arrangement dated 02.01.2014 indicates that though Chandrajitbhai N. Shah had signed the family arrangement on his behalf and on behalf of his two children namely, Jaymit and Tithi, but Hetalben C. Shah, wife of Chandrajitbhai N. Shah, a member of the "Chandrajitbhai Group" had signed herself the family arrangement on her own.

43. Coming to the case of the appellant Hetalben agitated in the application under Section 34 challenging the arbitral award, we find it pertinent to note the statements made by her in the application itself. It is stated in paragraph No. '3.14' of the application (under Section 34) that on 02.01.2014, a meeting was held by the mediators and the parties had signed the MOA / Family Arrangement in a hasty manner and in pressurized atmosphere created by the respondent No.1 namely, Rajendrabhai @ Samirbhai Natvarlal Shah. It is also stated therein that mediators as well as mother of two brothers namely, Induben were requesting the respondent No.5 namely, Chandrajitbhai and his family members to put the matter to an end and thereby, the respondent No.5 namely Chandrajitbhai N. Shah was compelled to sign the MOA / Family Arrangement dated 02.01.2014. It is further stated therein that the appellant being the wife of respondent No.5 was under sentimental pressure and under the emotional blackmailing, she was required to sign the same and without reading, the appellant had signed the MOA / Family Arrangement dated 02.01.2014.

44. After saying so, the appellant made various assertions with regard to the non-compliance of family arrangement on the part of the members of the other group and assertions have been made that the MOA was got signed by the respondent No.1 namely, Rajendrabhai N. Shah by practicing pressure, misrepresentation and hiding substantial joint properties. Amongst various contentions made in the application, pertinent is to extract the assertions in paragraph No.'3.22' of the application, which reads as under:-

> **"3.22]** It appears from the record of the Arbitral Tribunal, that after having constitution of the arbitral, Notice dated 12/02/2016 was issued to the parties and their Ld. Council informing the date of preliminary first arbitral meeting, accordingly, a first arbitral meeting took place on 25/02/2016. It is pertinent to note that in the said meeting, on behalf of the opponent No. 1 to 4, the objection application was filed by raising an objection qua the appointment of Induben Shah as an Arbitrator. Thereafter the second arbitral meeting was fixed on 29/03/2016, in the said meeting an objection application was filed by the Claimants i.e. present applicant and Opponent No. 5 to 7 raising objection for appointment of Hon'ble Justice C. K. Buch as an Arbitrator but thereafter it appears some talks of amicable settlement was proposed and the matter was adjourned on 19/05/2016. It appears both the party's objection application regarding appointment of arbitrators were not pressed and thereafter it appears from the record and from the order of the Tribunal that after long discussion and due deliberation and with the assistance of the tribunal and Ld. Councils, both the party agreed to have a amicable settlement i.e. both the groups held Shri Chandrajit N. Shah and Rajendrabhai N. Shah have singed the settlement agreement (Consent Terms) dated 19/05/2016. It appears thereafter in terms of the said consent Terms, the Hon'ble Arbitral Tribunal was pleased to pass the order of recording the settlement agreement dated 19/05/2016 and passed consent award and pronounced the same on 03/06/2016, in absence of present applicant, opponent No. 6 &7 of the present petition and it is a said consent award is hereby challenged by the present applicant on the following and the other grounds:"

45. A bare reading of the averments made in the application filed on behalf of the appellant itself makes, it evident that though initially certain objections were taken by the parties, however, an amicable settlement was proposed and on deliberations after a long discussion with the assistance of the tribunal and the learned counsels appearing for both the parties, an amicable settlement had been arrived at between both two groups and Chandrajitbhai N. Shah and Rajendrabhai N. Shah had signed the settlement agreement (consent terms) dated 19.05.2016. The said consent terms have been incorporated in the consent award passed on 03.06.2016. Though it is sought to be asserted by appellant Hetalben N Shah that the consent award dated 03.06.2016 was pronounced in the absence of the appellant, but there is an admission on her part that the settlement agreement (consent terms) dated 19.05.2016 was arrived at between the two groups, with the aid and assistance of the learned Arbitrators and the learned advocates appearing for the parties during the course of the arbitral proceedings. It is also an admitted fact, as per the statement made by the appellant, extracted hereinabove, that both the groups' head Chandrajitbhai N. Shah and Rajendrabhai N. Shah had signed the settlement agreement (consent terms) dated 19.05.2016.

46. Once this is an admitted fact stated in the application under Section 34 filed by the appellant Hetalben N. Shah itself, the challenge to the arbitral award (consent award) dated 03.06.2016 on the premise that the appellant was not party to the settlement agreement dated 19.05.2016 and

hence, the consent award dated 03.06.2016 cannot be said to be signed on her behalf, is wholly unacceptable. We may also note the statements made in Clause '4.5' of the "Grounds" in the application under Section 34 filed by the appellant herein, which read as under:-

> **"4.5.** The Ld. Tribunal has committed a serious error in recording the compromise / consent terms /settlement agreement dated 19/05/2016, wherein the present opponent No. 1 and opponent No. 5 were only the party to the said settlement and rest of all six parties namely present applicant and opponent No. 6,7 & 8 as well as the opponent No. 2, 3 & 4, were / are not a party to the said settlement agreement. Not only that, the said consent terms / settlement have not signed by the present applicant and other aforesaid parties who were not party to the consent terms. In the circumstances, unless having arrived at to the satisfaction, by the Ld. Tribunal, that the parties who have signed the consent terms, are holding the valid Power of Attorney of the respective family members, for and on behalf of such family members the opponent No. 1 and opponent No. 5 could not have been construed to have acquired valid Power to enter into the compromise on their behalf. Thus, the Ld.. Tribunal without ascertaining the said position and without arriving at to the satisfaction to the effect that opponent No. 1 and opponent No. 5 are holding the valid power under the eyes of law to enter into the compromise or to have signing of the present consent terms, has seriously committed an error in recording the consent terms and resultantly passing the impugned consent award dated 03/06/2016. Thus, the recording of the consent terms / settlement for all the parties including the present applicant, who is not party to the consent terms, nor has signed any such consent terms, nor have deligated any power in favour of the opponent No. 5, though he may the husband of applicant, such consent terms recording by the Hon'ble Tribunal, even for the applicant, is erroneous and without authority of Law and without jurisdiction and the said consent terms are not binding to the present applicant, in as much as the applicant has never agreed to such consent terms, when it was entered into and recoded by the Hon'ble Tribunal. Therefore, the impugned consent award, which is a creature of the said conent terms is patently illegal, null and void and passed by without authority of Law and against the consent of the present applicant and the opponent No. 6 & 7. Therefore, it is in the wider interest of justice to interfere in the matter by this Hon'ble Court by exercising the power U/s. 34 of the Arbitration

> and Conciliation Act, 1996, hereinafter be referred as the Arbitration Act of 1996, in as much as to have a recording of such consent terms / settlement, without the consent of the six parties in the proceedings, as stated hereinabove, is amount to a misconduct on the part of Arbitral Tribunal and therefore, such consent award is required to be set aside in the interest of justice."

47. From the averments made in the aforesaid paragraph, it can be discerned that there is an admission on the part of the appellant namely, Hetalben N. Shah that the respondent No.5 had a valid power of attorney of the respective family members on whose behalf, he was appearing before the Tribunal and had also signed the consent terms and the consent award. The assertion that recording of consent terms for all the parties, who had not signed any consent terms cannot lead to a valid consent award, is wholly misleading.

48. In any case, in view of the admission made on behalf of the appellant in her application under Section 34 about execution of the power of attorney in favour of her husband namely, Chandrajitbhai N. Shah, no dispute can be raised by her to the settlement agreement (consent terms) signed by Chandrajitbhai N. Shah on his behalf and on behalf of his family members on 19.05.2016 in the arbitral proceedings. No dispute, as such, can be raised to the validity of the consent award dated 03.06.2016, which incorporated the consent terms arrived between two groups namely, "Rajendrabhai Group" and "Chandrajitbhai Group" in the family arrangement dated 02.01.2014 as well as the settlement agreement (consent terms) signed by the heads of the aforesaid groups on 19.05.2016 before the Arbitral Tribunal.

49. It is also pertinent to note that the consent award dated 03.06.2016 being based on the family arrangement dated 02.01.2014 is to be given the same effect as is to be given to the family arrangement between the members of the same family.

50. It may not be out of place to note the decision of the Apex Court in the case of **Kale v. Director of Consolidation, *[(1976) 3 SCC 119]*** dealing with the principles governing family arrangement, the effect and value of family arrangement entered into between the parties with a view to resolve the disputes once and for all. It was noted by the Apex Court therein that:-

> **"9.** Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise *Kerr on Fraud* at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:
> "The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend."
>
> The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity

of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain .and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In *Halsbury's Laws of England*, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

"A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of

the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements."

10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

"(*1*) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(*2*) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(*3*) The family arrangement may be even oral in which case no registration is necessary;

(*4*) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made *under the document* and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(*5*) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(*6*) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

11. The principles indicated above have been clearly enunciated and adroitly adumbrated in a long course of decisions of this Court as also those of the Privy Council and other High Courts, which we shall discuss presently.

12. In *Lala Khunni Lal* v. *Kunwar Gobind Krishna Narain* [LR 38 IA 87, 102 : ILR 33 All 356 : 8 ALJ 552] the statement of law regarding the essentials of a valid settlement was fully approved of by their Lordships of the Privy Council. In this connection the High Court made the following observations which were adopted by the Privy Council:

The learned Judges say as follows:

"The true character of the transaction appears to us to have been a settlement between the several members of the family of their disputes, each one relinquishing all claim in respect of all property in dispute other than that falling to his share, and recognizing the right of the others as they had previously asserted it to the portion allotted to them respectively. It was in this light, rather than as conferring a new distinct title on each other, that the parties themselves seem to have regarded the arrangement, and we think that it is the duty of the courts to uphold and give full effect to such an arrangement.

Their Lordships have no hesitation in adopting that view."

13. In *Sahu Madho Das* v. *Pandit Mukand Ram* [(1955) 2 SCR 22, 42-43 : AIR 1955 SC 481] this Court appears to have amplified the doctrine of validity of the family arrangement to the farthest possible extent, where Bose, J., speaking for the Court, observed as follows:

"It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary. But, in our opinion, the principle can be carried further and so strongly do the courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid in anticipation, future disputes which might ruin them all, and we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made

such an assertion of title) and are content to take such properties as are assigned to their shares as gifts pure and simple from him or her, or as a conveyance for consideration when consideration is present."

14. In *Ram Charan Das* v. *Girjanandini Devi* [(1965) 3 SCR 841, 850-851 : AIR 1966 SC 323] this Court observed as follows:

"Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family. The word 'family' in the context is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute .... The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another. That consideration having been passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter."

15. In *Tek Bahadur Bhujil* v. *Debi Singh Bhujil* [AIR 1966 SC 292, 295 : (1966) 2 SCJ 290] it was pointed out by this Court that a family arrangement could be arrived at even orally and registration would be required only if it was reduced into writing. It was also held that a document which was no more than a memorandum of what had been agreed to did not require registration. This Court had observed thus:

"Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess."

16. Similarly in *Maturi Pullaiah* v. *Maturi Narasimham* [AIR 1966 SC 1836 : (1967) 1 SCJ 848] it was held that even if there was no conflict of legal claims but the settlement was a bona fide one it could be sustained by the Court. Similarly it was also held that even the disputes based upon ignorance of the parties as to their rights were

sufficient to sustain the family arrangement. In this connection this Court observed as follows:

"It will be seen from the said passage that a family arrangement resolves family disputes, and that even disputes based upon ignorance of parties as to their rights may afford a sufficient ground to sustain it.

17. In *Krishna Beharilal* v. *Gulabchand* [(1971) 1 SCC 837 : 1971 Supp SCR 27, 34] it was pointed out that the word "family" had a very wide connotation and could not be confined only to a group of persons who were recognised by law as having a right of succession or claiming to have a share. The Court then observed: [SCC p. 843, paras 7-8]

"To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in *Ram Charan Das* v. *Girjanandini Devi* the word "family" in the context of a family arrangement is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement — see *Ram Charan Das case* [(1965) 3 SCR 841, 850-851 : AIR 1966 SC 323] .

The courts lean strongly in favour of family arrangements to bring about harmony in a family and do justice to its various members and avoid in anticipation future disputes which might ruin them all."

18. In the recent decision of this Court in *S. Shanmugam Pillai* v. *K. Shanmugam Pillai* [(1973) 2 SCC 312] the entire case law was discussed and this Court observed as follows: [pp. 319, 321-322, paras 12, 24-25]

"If in the interest of the family properties or family peace the close relations had settled their disputes amicably, this Court will be reluctant to disturb the same. The courts generally lean in favour of family arrangements.

19. Thus it would appear from a review of the decisions analysed above that the courts have taken a very liberal and broad view of the validity of the family settlement and have always tried to uphold it and maintain it. The central idea in the approach made by the courts is that if by consent of parties a matter has been settled, it should not be allowed to be reopened by the parties to the agreement on frivolous or untenable grounds.

20. A Full Bench of the Allahabad High Court in *Ramgopal* v. *Tulshi Ram* [AIR 1928 All 641, 649 : 26 ALJ 952] has also taken the view that a family arrangement could be oral and if it is followed by a petition in

court containing a reference to the arrangement and if the purpose was merely to inform the court regarding the arrangement, no registration was necessary. In this connection the Full Bench adumbrated the following propositions in answering the reference:

"We would, therefore, return the reference with a statement of the following general propositions:

With reference to the first question:

(*1*) A family arrangement can be made orally.

(*2*) If made orally, there being no document, no question of registration arises.

With reference to the second question:

(*3*) If though it could have been made orally, it was in fact reduced to the form of a "document", registration (when the value is Rs 100 and upwards) is necessary.

(*4*) Whether the terms have been 'reduced to the form of a document' is a question of fact in each case to be determined upon a consideration of the nature and phraseology of the writing and the circumstances in which and the purpose with which it was written.

(5) If the terms were not 'reduced to the form of a document', registration was not necessary (even though the value is Rs 100 or upwards); and while the writing cannot be used as a piece of evidence for what it may be worth, e.g. as corroborative of other evidence or as an admission of the transaction or as showing or explaining conduct.

(6) If the terms were 'reduced to the form of a document' and, though the value was Rs 100 or upwards, it was not registered, the absence of registration makes the document inadmissible in evidence and is fatal to proof of the arrangement embodied in the document."

21. Similarly in *Sitala Baksh Singh* v. *Jang Bahadur Singh* [AIR 1933 Oudh 347, 348-349] it was held that where a Revenue Court merely gave effect to the compromise, the order of the Revenue Court did not require registration. In this connection the following observations were made:

"In view of this statement in para 5 of the plaint it is hardly open to the plaintiffs now to urge that Ex. 1, the compromise, required registration when they themselves admit that it was embodied in an order of the Revenue Court and that it was given effect to by the Revenue Court ordering mutation in accordance with the terms of the compromise.

* * *

We hold that as the revenue court by its proceedings gave effect to this compromise, the proceedings and order of the revenue court did not require registration. Similarly in a later decision of the same court in *Kalawati* v. *Krishna Prasad* [ILR 19 Luck 57, 67 : AIR 1944 Oudh 49] it was observed as follows:

"Applying this meaning to the facts of the present case, it seems to us that the order of the mutation court merely stated the fact of the compromise having been arrived at between the parties and did not amount to a declaration of will. The order itself did not cause a change of legal relation to the property and therefore it did not declare any right in the property."

22. The same view was taken in *Bakhtawar* v. *Sunder Lal* [AIR 1926 All 173, 175 : ILR 48 All 213 : 24 ALJ 116] where Lindsay, J., speaking for the Division Bench observed as follows:

"It is reasonable to assume that there was a bona fide dispute between the parties which was eventually composed, each party recognizing an antecedent title in the other. In this view of the circumstances I am of opinion that there was no necessity to have this petition registered. It does not in my opinion purport to create, assign, limit, extinguish or declare within the meaning of these expressions as used in Section 17(1)(*b*) of the Registration Act. It is merely a recital of fact by which the court is informed that the parties have come to an arrangement."

23. Similarly the Patna High Court in *Awadh Narain Singh* v. *Narain Mishra* [AIR 1962 Pat 400 : 1962 BLJR 881] pointed out that a compromise petition not embodying any terms of agreement but merely conveying information to the court that family arrangement had already been arrived at between the parties did not require registration and can be looked into for ascertaining the terms of family arrangement. This is what actually seems to have happened in the present case when the mutation petition was made before the Assistant Commissioner.

24. This Court has also clearly laid down that a family arrangement being binding on the parties to the arrangement clearly operates as an estoppel so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same...."

51. With the above, the challenge to the consent award dated 03.06.2016 at the behest of the appellant Hetalben N. Shah cannot be sustained.

52. The decision relied by the learned Senior Counsel for the appellant in **Benarsi Krishna Committee v. Karmyogi Shelters (P) Ltd., *[(2012) 9 SCC 496]***; **Union of India v. Tecco Trichy Engineers & Contractors, [*(2005) 4 SCC 239]*** and **State of Maharashtra v. ARK Builders (P) Ltd., [*(2011) 4 SCC 616]*** on the interpretation of Section 31 (5) read with Section 34 (3) of the Arbitration and Conciliation Act, 1996 would be of no benefit to the appellant. The submissions made by the learned Senior Counsel for the appellant – Hetalben about the alleged fraud played by the respondent No.1 namely, head of "Rajendrabhai Group" in arriving at the family arrangement dated 02.01.2014 and the consent term dated 19.05.2016, is neither here nor there. No benefit can be derived from the decision of the Apex Court in the case of **A.V. Papayya Sastry v. Govt. of A.P., *[(2007) 4 SCC 221].***

53. We do not find any error in the decision of the Court under Section 34 in allowing the application at Exhibit '24' filed by the opposite party Nos.1 to 4 therein raising issue of estoppel, by holding that the application raising preliminary objections is required to be heard first. Further, the order allowing the application at Exhibit '9' filed by the opposite party Nos. 1 to 4 therein with regard to the entertainability of the application under Section 34 does not suffer from any illegality. No infirmity can be found in the decision of the Court under Section 34 in rejecting the application under Section 34 being beyond limitation, having been filed after a lapse of five years from the date of consent award. The Court

under Section 34 cannot be said to have erred in rejecting the contention of the appellant – Hetalben that she was not party to the proceedings and had no knowledge about the arbitral proceedings and since she had not signed the settlement agreement before the Arbitral Tribunal, and the signed copy of the arbitral award was not provided to her, she can sustain the challenge in the application under Section 34 filed in the year 2021 registered as Arbitration Petition No.300 of 2021.

54. The Court under Section 34, while allowing the preliminary objection of opposite party No.1 to 4 rejecting the application under Section 34 filed by Hetalben, has also recorded that the disputes between the parties having been resolved before the Arbitral Tribunal and family arrangement having been entered into, the consent award is binding on all the parties. The allegations of fraud and technical grounds to maintain the challenge to the consent award do not stand in the eye of law.

55. The plea of fraud is nothing but a disguise to unsettle the family arrangement arrived between the heads of the two joint families with regard to ancestral properties and joint businesses.

56. It is an admitted position that Chandrajitbhai Shah, the head of the “Chandrajitbhai Group” has accepted the award and has not filed any Section 34 application indicating that he has been defrauded by his brother / the opponent group. Even in Court, his advocate does not raise a single grievance before us.

57. In view of the above discussion, the First Appeal No.227 of 2023 filed by Hetalben Chandrajit Shah, wife of Chandrajitbhai Natvarlal Shah, who is a signatory of the consent award dated 03.06.2016, is hereby dismissed being devoid of merits. No order as to costs.

58. With the above, both the appeals, i.e. First Appeal No.1903 of 2022 and First Appeal No.227 of 2023 stand dismissed. No order as to costs. Connected civil applications in the respective first appeals stand disposed of, accordingly.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

SAHIL S. RANGER