



2025:KER:92193

ARB.A NO. 24 OF 2016

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

FRIDAY, THE 28TH DAY OF NOVEMBER 2025 / 7TH AGRAHAYANA, 1947

ARB.A NO. 24 OF 2016

AGAINST THE JUDGMENT DATED IN OP(ARB) NO.341 OF 2014 OF I
ADDITIONAL DISTRICT COURT, THIRUVANANTHAPURAM

APPELLANT/PETITIONER IN OP(ARB):

SHIJU .R
AGED 43 YEARS
S/O. RAMAKRISHNAN, SHRAVANAM, CHEMPAZHANTHY
P.O, TRIVANDRUM - 695587.

BY ADVS. SRI.R.O.MUHAMED SHEMEEM
SMT.NASEEHA BEEGUM P.S.
SHRI.ELVIN PETER P.J. (SR.)
SRI. ADARSH BABU C.S.

RESPONDENT/RESPONDENT IN OP(ARB):

SUNIL KUMAR V., AGED 44 YEARS, S/O.VISWANATHAN NAIR,
ANNAPOORNEWASARI SADANAM, PATTAANIKUNNU
LANE, SASTHAMANGALAM P.O., TRIVANDRUM (BUSINESS ADDRESS
PARTNER, ZEPHYR, SREEVIHAR, T.C 25/2854, NEAR
UPPIDAMOODU BRIDGE, TRIVANDRUM-695001)

SRI. K.JAYAKUMAR (SR.)
SRI. SHINOD G.P.
SMT. ANJU C.V.

THIS ARBITRATION APPEALS HAVING COME UP FOR ADMISSION ON
28.11.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.JUDGMENTDated this the 28th day of November 2025NITIN JAMDAR, C.J.

The Appellant, R. Shiju, and the Respondent, V. Sunil Kumar, were carrying on a partnership business providing entrance coaching facilities for advanced studies such as Medical, Engineering, MBA, and MCA courses under the name and style of 'Zephyr', pursuant to a partnership deed executed in the year 1997. Disputes arose between them, leading to the invocation of the arbitration clause contained in the partnership deed. An arbitral award was passed, which was subsequently challenged through an arbitration petition. Upon rejection of that petition, R. Shiju has now filed this appeal.

2. Mr. V. Sunil Kumar, the Respondent/Claimant, submitted a claim statement on 16 July 2013 before the Arbitrator, asserting that, due to the success of the partnership firm's operations, the Appellant, Mr. R. Shiju, established a similar proprietary venture in the name and style of 'Aspirant' and publicised the new venture. He claimed that although the partnership was at will and could have been dissolved by issuing a notice of dissolution, the Respondent/Claimant, considering the future of the thousands of students enrolled in the institution, resorted to arbitration to effect the dissolution of the partnership. The Respondent sought dissolution of the partnership, settlement of accounts, and division of the



firm's assets in equal shares.

3. The Appellant – R. Shiju, filed a defence statement that commencement of the new venture 'Aspirant', did not violate any stipulation contained in the partnership deed. He contended that it was the Claimant who sought to dominate the management of the partnership and had denied the Appellant access to its records. The Respondent had also sought dissolution of the partnership and distribution of the assets.

4. The Arbitrator appointed two Commissioners, Mr. George Sacariah and Mr. Kylas, for the valuation of the properties, and also appointed Mr. Jobi as the Auditor of the firm to prepare and produce the accounts. No oral evidence was adduced by either side. The Arbitrator concluded the arbitration proceedings by directing the dissolution of the partnership, including its assets and goodwill. Accordingly, the award was rendered on 19 April 2014.

5. The Appellant filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (Act of 1996), before the Court of the Additional District Judge, Thiruvananthapuram, in O.P. No. 341 of 2014. The learned District Judge, by judgment dated 23 March 2016, dismissed the Original Petition. Thereafter, the Appellant filed the present appeal under Section 37 of the Act of 1996 on 29 April 2016. In this appeal, the Appellant filed Application No. 3184 of 2017, placing the income tax proceedings on record and seeking a direction for the Respondent to pay or deposit in court a sum of ₹25,96,359/-. In



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response, the Respondent filed a counter-affidavit, to which the Appellant subsequently filed a reply.

6. We have heard Mr. Elvin Peter P.J., learned Senior Advocate instructed by Mr. R.D. Muhamed Shameem assisted by Mr. Adarsh Babu C.S., learned counsel for the Appellant, and Mr.K. Jayakumar, learned Senior Advocate instructed by Mr. Shinod G.P. assisted by Ms. Anju C.V., learned counsel for the Respondent.

7. The Arbitrator has directed the dissolution of the partnership firm and the distribution of all movable and immovable assets, including the goodwill. The learned Senior Advocate appearing for the Appellant submitted that the appeal is restricted to that part of the award which pertains to the determination and allocation of goodwill between the parties, quantified at ₹75 lakhs.

8. The submission of the Appellant, in furtherance of their grievance, is as follows: The goodwill was valued at ₹75 lakhs by the Commissioners appointed by the Arbitrator, which was an undervaluation, and the Arbitrator erred in accepting this valuation. The two Commissioners, Mr. George Sacariah and Mr. Kylas, were engineers appointed only for the purpose of valuing the immovable assets, as is evident from the order appointing them as Commissioners; yet, in their report, the valuation of goodwill was included within the valuation of the immovable properties. Even the arbitral award has treated the goodwill as part of the immovable assets when it is settled law that goodwill is an intangible asset and cannot



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be considered an immovable asset. From the accounts placed on record by the Auditor, it can be demonstrated that the goodwill cannot be valued at ₹75 lakhs but at least ₹3 crores, and the Appellant was ready to buy out the goodwill at ₹3 crores—an offer which was wrongly rejected by the Arbitrator solely on the ground that the Appellant did not file an affidavit. There is an elaborate methodology that needs to be adopted while calculating goodwill, which has been enumerated in the decision of the Division Bench of the Allahabad High Court in *Smt. Vindoor Bai v. Controller of Estate Duty, Kanpur*. The Commissioners, being engineers, were not qualified to carry out the valuation of goodwill. Such a valuation ought to have been conducted in accordance with the valuation standards issued by the Institute of Chartered Accountants of India. Reliance by the Arbitrator on the valuation submitted by these two Commissioners is a patent illegality. The second head of challenge was that the Respondent/Claimant failed to properly maintain the partnership firm's accounts and that the Appellant was kept out of the firm's management and business. These accounts were manipulated, and therefore, the goodwill could not have been accurately determined on the basis of such manipulated accounts, showing profits by application in this appeal. The income tax assessment orders arising from raids on the premises of both the Appellant and the Respondent fortify the stand of the Appellant regarding the fraudulent accounting practices allegedly carried out by the Respondent. Section 34(2)(a) of the Act of 1996 was amended on 30 August 2019 to replace the phrase “furnishes proof that” with “establishes



on the basis of the record of the arbitral tribunal that.” The amendment is prospective, and the present arbitral proceedings were before that date. The Respondent/Claimant committed fraud by failing to report correct particulars to the income tax authorities. The Appellant is not raising a new ground through this application but is merely placing on record material that supports a ground already raised during the arbitration proceedings and under Section 34 of the Act of 1996. Thus, a case for setting aside the award under Section 34 of the Act of 1996 was made out, and the District Court erred in failing to exercise its powers. The Appellant has relied upon the following decisions in support of his submissions. *Alpine Housing Development Corporation Pvt. Ltd (M/s) v. Ashok S. Dhariwal*¹, *Emkay Global Financial Services Ltd. (M/s) v. Girdhar Sondh*², *Namtech Consultants Private Limited and Ors. v. GE Thermometrics India Private Limited and Ors.*³, *Venture Global Engineering v. Saytam Computer Services Ltd. and Ors.*⁴, *State of Chhattisgarh and Another v. M/s. Sal Udyog Private Limited*⁵, *Smt. Vindoor Bai v. Controller of Estate Duty, Kanpur*⁶, *Gayatri Balasamy v. ISG Novasoft Technologies Limited*⁷.

9. The Respondent/Claimant, in short, contended as follows: No case

1 2023 SCC OnLine SC 55

2 (2018) 9 SCC 49

3 Judgment dated 13 November 2007 in Co. Appeal No. 3 of 2006 of the High Court of Karnataka

4 Judgment dated 11 August 2010 in Civil Appeal No. ..of 2010 in SLP(C)No.9238 of 2010 of the Hon'ble Supreme Court

5 (2022) 2 SCC 275

6 1980 SCC OnLine All 964

7 (2025) 7 SCC 1



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has been made out under Section 34 of the Act of 1996 to set aside the present award. The defence statement filed by the Appellant itself belies the stand taken by the Appellant in this appeal. The claim for dissolution was filed on the ground that the Appellant had started parallel coaching classes. The Appellant and the Respondent had agreed to look after the academics and accounts in alternate years. The Appellant was also involved in and responsible for maintaining the accounts. The goodwill of the firm forms part of its assets, as evident from the notices issued by the parties and also the statutory provisions. The Appellant did not object to the appointment of the two Commissioners to value the assets, and one of the issues framed by the Arbitrator was the division of the assets, including goodwill. Furthermore, the Appellant did not object to the inclusion of the reports of the two Commissioners, Exts. P1 and P2, on record. Ext. P2(a) filed by the Auditor is not a valuation report but merely general accounts, from which the Appellant is attempting to contend that the profit amounts to ₹3 crores. The Arbitrator has relied on the reports of the two Commissioners, and there is no perversity or patent illegality in accepting their reports. Apart from the Appellant filing an application in respect of the income tax proceedings belatedly in the appeal, the challenge based on the income tax returns has no merit, as the statutory appeals filed by the Respondent are still pending, and these documents have not attained finality. An arbitral award, which is required to have finality, cannot be set aside on the basis of incomplete proceedings that are under challenge. No case has been made out for



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exercising the powers under Section 34 of the Act of 1996, and therefore, there was no error committed by the learned District Judge.

10. We have considered the rival contentions.

11. Though the Appellant has sought to advance several grounds, the scope of interference with an arbitral award must be kept in mind while considering the present challenge. Section 5 of the Act of 1996 makes it clear that no judicial authority shall intervene in the arbitral proceedings and the award except where so provided under the Act of 1996. Intervention in the arbitral award is permissible only in the proceedings taken out under Sections 34 and 37 of the Act of 1996. Section 34(2) of the Act of 1996 lists the grounds on which the award may be set aside, and only if the parameters therein are satisfied. Section 37 of the Act of 1996, which provides for an appeal, is equally limited in its scope. In an appeal under Section 37, the appellate court is required only to examine whether the court exercising jurisdiction under Section 34 has acted within its limits of the powers prescribed therein, or whether it has exceeded or failed to exercise such powers. An appeal under Section 37 of the Act of 1996 is not to be equated with a first appeal under the Code of Civil Procedure, and its power is more akin to that of superintendence.

12. The first challenge of the Appellant is to the Arbitrator's valuation of the goodwill. According to the Appellant, the orders of the Arbitrator appointing the Commissioners, who submitted Exts. A1 and A2 reports, did not refer to the valuation of the goodwill, and the Commissioners



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were directed only to determine the value of the immovable property listed in Schedule A of the claim petition, and that Schedule A did not include the goodwill. There is no merit in this submission. In the defence statement filed by the Appellant, reference is made to the notice issued by the Advocate on 4 May 2013, seeking the dissolution of the firm and the settlement of accounts, including the goodwill of the firm. This notice formed the foundation of the arbitral proceedings. Further, in the arbitral award, the learned Arbitrator framed issues for consideration, and one of the issues was to determine the assets of the partnership firm and its net worth after deducting the outstanding liabilities. Goodwill is part of the property of the firm that had to be valued and distributed along with other assets, and the Appellant does not contend that goodwill should have been excluded from the distribution of assets. Section 14 of the Indian Partnership Act, 1932, states that, subject to the contract between the partners, the goodwill of the business is included in the property of the business. As observed by the learned Arbitrator, no contract to the contrary was placed on record, and therefore, the goodwill formed part of the property to be determined and divided. That being the factual and legal position, there was no error, much less any patent illegality, committed by the Arbitrator in including the goodwill as part of the property to be distributed. The contention of the Appellant that the Arbitrator categorized the goodwill as immovable property and, as goodwill is not an immovable asset, has no consequence. All properties owned by the firm, whether movable or immovable, were listed.



Therefore, the mere use of the word ‘immovable’ in the heading of the list does not create any ground of challenge. Such a submission cannot be considered under Section 34 of the Act of 1996.

13. The Appellant questioned the competence of the two Commissioners, Mr. George Sacariah and Mr. Kylas, who valued the goodwill. According to the Appellant, these Commissioners are engineers and, as per the guidelines of the Institute of Chartered Accountants of India, a valuer must be properly qualified, and the valuers must follow a specified method as held by the Division Bench of the Allahabad High Court in the case of *Smt. Vindoor Bai*, which specifies various modes of valuation. Firstly, the Commissioners, Mr. George Sacariah and Mr. Kylas, were not laypersons. The learned counsel for the Respondent pointed out that, as evident from the record, Mr. Kylas is not only a Superintending Engineer but also holds the qualifications FIE (Fellow of the Institution of Engineers), FIV (Fellow of the Institution of Valuers), FICA (Fellow of the Institute of Chartered Accountants), and is a Chartered Engineer as well as a registered valuer. The decision of the Allahabad High Court in *Smt. Vindoor Bai* arose from an order of the Assistant Controller of Estate Duty, in which the issue concerned the assessment of goodwill in proceedings for the levy of State duty. In the case at hand, in the valuation report, the Commissioners elaborated on the method adopted, namely the profit pace method, and arrived at a specific conclusion using this method, which was placed before the Arbitrator. Therefore, it cannot be said that the valuation of the goodwill



placed before the Arbitrator was a completely ad hoc or random exercise. Considering that the Arbitrator was called upon to make an equitable distribution of the assets and had appointed valuers who were not laypersons, it cannot be said that the Arbitrator committed any patent illegality.

14. The two Commissioners were appointed as valuers by consent. When the reports Exts. X1 and X2 of the Commissioners were submitted, they were duly admitted, taken on record, and marked accordingly. No oral evidence was adduced by either party. According to the Respondent, the Appellant is therefore precluded from contesting the Commissioners' reports. In response, the Appellant submitted that objections to the Commissioners' reports had been duly raised, and consequently, it cannot be contended that the Appellant is precluded from questioning the reports. We have seen the objection filed by the Appellant to the Commissioners' reports. The objection is limited to the calculation made by the Commissioners as incorrect, and the correctness of the amount of ₹75 lakhs, relying on the accounts submitted by the Auditor, Mr. Jobi.

15. According to the Appellant, the sum of ₹75 lakhs determined as goodwill is incorrect, and the accounts prepared by the Auditor, Mr. Jobi, would show that the amount would be ₹3 crores. However, this figure of ₹3 crores put forth by the Appellant is not supported by any formal valuation report, nor has the Auditor determined or certified this amount. It is based solely on the Appellant's own calculations based on the



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accounts. The Appellant is not an expert, and it is the Appellant's own contention that the valuation of goodwill is an expert's domain. Although the Appellant raised objections to the assessment of goodwill by the Commissioners, no effective steps were taken to cross-examine the Commissioners. Thus, when the Arbitrator had to choose between the Appellant's own calculations and the report of the Commissioners appointed by consent to value the goodwill, the Arbitrator chose to rely on the valuation report of the Commissioners. As regards the offer of the Appellant to buy the goodwill at ₹3 crores, the Arbitrator asked for the offer on affidavit, which the Appellant did not file. If the Arbitrator concluded that the offer could not be accepted without an affidavit, it was permissible for the Arbitrator to adopt that approach. No error can be attributed to this approach, much less any ground under Section 34 of the Act of 1996. The Arbitrator was well within his jurisdiction in choosing to proceed on the basis of the Commissioners' report.

16. The next limb of the Appellant's challenge is that the award is vitiated by fraud by the Respondent on the ground that the goodwill was determined by the Commissioners based on profits that were allegedly manipulated, and this fact has been demonstrated by the Appellant through the income tax proceedings against both parties. The learned Senior Advocate for the Appellant has made elaborate submissions regarding the amendment to Section 34(2)(a) of the Act of 1996, contending that since the case is prior to the 2019 amendment, which is prospective, the Appellant is entitled to furnish proof based on the



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grounds under Section 34 of the Act of 1996. The learned counsel for the Respondent submitted that apart from the legal position, the conduct of the Appellant has to be considered. The Respondent/Claimant contended that the Appellant was aware of the income tax proceedings and cannot now claim ignorance of the income tax raids and related proceedings. In response, the Appellant contends that he was not aware of the accounts and had, therefore, earlier filed a petition under Section 9 of the Act of 1996, seeking a direction to furnish the accounts.

17. The arbitral award was rendered on 19 April 2014. Thereafter, on 16 June 2014, the Appellant instituted an application under Section 34 of the Act, 1996. Income tax raids were conducted on 17 September 2014, and the statements of both the Appellant and the Respondent were recorded by the authorities on 18 September 2014. A search was also carried out at the Appellant's institution on the same day. The Section 34 petition remained pending when the raids occurred in September 2014 and came to be dismissed nearly two years later, on 23 March 2016. At no point during this period did the Appellant seek to amend the application. The present appeal was filed on 29 April 2016, and, only one year and four months thereafter, on 22 August 2017, the Appellant moved an application to bring the income tax assessment on record. No satisfactory explanation has been offered for the failure to produce these documents while the Section 34 petition was pending.

18. The case of the Appellant, as set out in the defence statement before



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the Arbitrator, needs to be scrutinized. In the defence statement, the Appellant expressly admitted that the commencement of another coaching class by him was the source of discord between the partners. It is also recorded that the partners had agreed to alternate, on a yearly basis, the management of the accounts and the academic administration, and that they would accordingly exchange their roles on 31 May each year. The partnership deed reflects this very arrangement and stipulates that both partners were to remain actively engaged in the affairs of the firm. No oral evidence was led by either party. The defence statement, read together with the partnership deed, thus indicates that the Appellant had a significant and active role in the functioning of the partnership.

19. Before the income tax authorities, the Appellant's statement was recorded, and when queried about the unequal sharing of profits, he reiterated that the partners alternated, year by year, in managing the accounts and academic administration. The authorities further recorded that the unaccounted income generated was divided between the partners in proportion to their respective investments. Notably, the Appellant had initially sought to rely upon the accounts prepared by the Auditor, Mr. Jobi, for the purpose of computing the goodwill. However, at a later stage, the Appellant sought to discredit the same auditor, alleging that the accounts were fraudulent. In these circumstances, the learned counsel for the Respondent is justified in submitting that the Appellant, as the litigation progressed, has shifted from the original stand taken in the defence statement.



20. The proceedings of the income tax authorities, which the Appellant now seeks to rely upon in this appeal, were not placed either before the learned Arbitrator or before the District Court in the petition under Section 34 of the Act. The question that arises, therefore, is whether such income tax assessments, introduced for the first time in appeal, can form the basis to set aside an arbitral award that was otherwise validly rendered. The learned Senior Advocate for the Appellant, while referring to Section 34(3) of the Act, which prescribes the limitation period, contended that the legislative policy underlying the provision is to ensure finality to arbitral awards and that proceedings cannot be permitted to remain in a state of perpetual uncertainty owing to the production of additional materials that may surface with the passage of time. Even assuming that in exceptional circumstances such material could be entertained, the Appellant has offered no cogent or convincing explanation as to how he claims to have been unaware of the income tax proceedings. Secondly, it is an admitted position that the Respondent has filed a statutory appeal against the income tax assessment orders, and these appeals continue to remain pending. The assessment orders, therefore, have not attained finality and, in fact, contain observations adverse to the Appellant. Such material, not yet final and contested and placed on record for the first time in an appeal under Section 37, cannot be relied upon to set aside an arbitral award which, as we have already found, was validly passed.



21. Thus, the position that emerges is that the learned Arbitrator, who was called upon to effect the distribution of assets upon the dissolution of the partnership, appointed Commissioners to carry out the valuation. The Commissioners duly submitted their report. The Respondent's contention that the goodwill ought to be reduced on account of the disputes between the partners was rejected by the Arbitrator. After adjusting the assets in a manner he considered fair and equitable, the Arbitrator proceeded to pass the award. We find no ground whatsoever under Section 34 of the Arbitration and Conciliation Act, 1996, to warrant interference with or to set aside the award. The award has been rendered within the jurisdiction of the Arbitrator and in accordance with the material placed before him, and no infirmity capable of attracting Section 34 has been demonstrated.

22. The learned District Judge considered the challenge to the award. The primary argument before the learned District Judge was that the partition carried out by the Arbitrator was not equal. The learned District Judge rightly rejected this contention, holding that under Section 34 of the Arbitration and Conciliation Act, 1996, appellate power cannot be exercised. The learned District Judge has addressed all the contentions raised by the Appellant. It cannot be said that the District Court, in exercise of its powers under Section 34 of the Arbitration and Conciliation Act, 1996, either committed any perversity or failed to exercise the powers vested in it to set aside the award.

23. Accordingly, we hold that no case was made out by the Appellant to



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set aside the arbitral award dated 19 April 2014 under Section 34 of the Arbitration and Conciliation Act, 1996, nor has any case been made out to warrant interference in the appeal under Section 37 of the Act of 1996.

24. The appeal is dismissed.

Sd/-

**NITIN JAMDAR ,
CHIEF JUSTICE**

Sd/-

**SYAM KUMAR V.M.,
JUDGE**

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APPENDIX OF ARB.A NO. 24 OF 2016**RESPONDENT ANNEXURES**

- Annexure R1(a) A true copy of the appeal preferred against Annexure A2 assessment order for the period 2009-10
- Annexure R1(b) A true copy of the appeal preferred against Annexure A3 assessment order for the period 2010-11
- Annexure R1(c) A true copy of the appeal preferred against Annexure A4 assessment order for the period 2011-12
- Annexure R1(d) A true copy of the appeal preferred against Annexure A5 assessment order for the period 2012-13
- Annexure R1(e) A true copy of the appeal preferred against Annexure A6 assessment order for the period 2013-14
- Annexure R1(f) A true copy of the appeal preferred against Annexure A7 assessment order for the period 2014-15

PETITIONER ANNEXURES

- Annexure A9 A true copy of IA No. 924 of 2014 in OP(Arb) 205/ 2014, dated 31.03.2014, filed before the learned District Court, Thiruvananthapuram, for appointment of Advocate Commission for inspection of the account book and other connected matters is produced
- Annexure A10 A true copy of the statement given by me before the income tax officers on 18/09/2014
- Annexure A11 A legible typed copy of Annexure A10 is produced
- Annexure A12 A true copy of the Appeal given by the petitioner before the joint commissioner of income tax, and order dated 03.10.2016
- Annexure A8 A true copy of OP(Arb)205/ 2014, dated 31.03.2014