

Registered Sale Deeds Between Partners Can Be Held Void In Arbitration Where The Evidence Shows No Consideration And No Real Transfer Of Title: Kerala High Court

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Introduction

In *Lazar Chakkola & Ors. v. Sudarsanan Pillai G.* [ARB.A No. 2 of 2023, decided on 17 December 2025], the Kerala High Court dismissed an arbitration appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (the "**Act**"), upholding the Commercial Court's order which had declined to set aside an arbitral award under Section 34 of the Act.

The arbitral award had dissolved a partnership firm that ran a hotel and bar known as 'Hotel Alakananda' at Kollam, declared the partnership deed and two registered sale deeds void for want of consideration, and settled accounts between the partners. The Court held that none of the grounds raised by the appellants warranted interference within the narrow confines of Sections 34 and 37 of the Act.

Facts

The first respondent (claimant before the Arbitrator) had started a hotel on his 21.5 cent parcel of land at Kollam. He held an FL-3 licence for running a bar, obtained in 1992. When the hotel ran into financial difficulties, the claimant and his wife entered into a partnership deed dated 1 April 1993 with several other persons to augment resources and meet outstanding liabilities, including debts owed to the Kerala Financial Corporation (KFC).

Pursuant to the partnership deed, two registered sale deeds were executed whereby the claimant and his wife, retaining 2 out of 15 shares, transferred the remaining shares to vendees who were partners of the firm. The sale deeds recited that consideration was partly paid and the balance retained by the vendees for meeting the firm's liabilities, including KFC dues. The partnership underwent multiple reconstitutions over the years, during which the claimant's wife and certain other partners retired while new persons were admitted.

After approximately 18 years of running the partnership, which saw both expansions (such as purchase of adjacent land for parking) and setbacks (including cancellation of the FL-3 licence and litigation up to the Supreme Court for its revival), disagreements broke out between the partners. The claimant alleged that the other partners had failed to discharge the firm's liabilities, while the other partners alleged that the claimant sought to oust them after the firm became profitable following their efforts in reviving the FL-3 licence.

The dispute led to invocation of the arbitration clause and appointment of an Arbitrator by the Kerala High Court. Before the Arbitrator, the claimant sought dissolution of the partnership by declaring it void from inception on the ground of fraud, a declaration that the two registered sale deeds were null and void, and settlement of the firm's accounts.

The Arbitrator, vide award dated 30 March 2017, allowed the claim in part. The partnership was declared dissolved. The partnership deed and the two sale deeds (Exhibits A6 and A7) were declared void and not affecting the claimant's title. The claim regarding a third sale deed (relating to a parking lot purchased by the firm) was decided against the claimant. The Arbitrator also settled the firm's accounts, determined the value of fixed assets at the time of dissolution, and directed the claimant to make certain payments to the other partners.

Aggrieved, the respondents in the arbitration challenged the award before the Commercial Court, Kollam, under Section 34 of the Act. The Commercial Court dismissed the challenge. The respondents thereafter filed the present appeal under Section 37 of the Act.

Contentions of the Appellants

The appellants raised several grounds. *First*, they contended that the dispute was non-arbitrable, as the claim sought invalidation of registered sale deeds which involved rights *in rem* and could only be adjudicated by civil courts under Section 31 of the Specific Relief Act, 1963. They relied on the principles laid down in ***Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*** [(2011) 5 SCC 532] and ***Lion Engineering Consultants v. State of Madhya Pradesh*** [(2018) 16 SCC 758].

Secondly, the appellants argued that the claims were barred by limitation under Article 58 of the Limitation Act, as the deeds dated 1995, 1998 and 2002 were challenged after nearly two decades, and the claim statement did not even include a clause explaining the commencement of the cause of action.

Thirdly, they submitted that the proceedings were vitiated by non-joinder of necessary parties, including a transferee who was not a signatory to the arbitration agreement, the Sub-Registrar, and the claimant's wife (an original partner).

Fourthly, the appellants contended that if the partnership deed was void for fraud as found by the Arbitrator, then the arbitration clause contained therein would also be rendered inoperative. They further argued that the claimant's participation in the partnership for 18–19 years and in multiple reconstitutions negated any allegation of fraud.

Finally, the appellants argued that the Arbitrator's finding of no consideration was contrary to evidence, including recitals in the registered deeds acknowledging payment, and the claimant's own admission that partnership liabilities including KFC dues had been discharged from partnership funds. Reliance was placed on ***Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra)*** [(2020) 7 SCC 366] and ***Munshi Ram v. Municipal Committee*** [1979 KLT OnLine 1131 (SC)].

Contentions of the Respondents

The respondents (claimant) submitted that no interference was warranted. They argued that the question of arbitrability had already been raised, heard and determined as a preliminary issue by the first Arbitrator in favour of the claimant, and was never

challenged in the Section 34 petition. The limitation objection had been considered and rejected by both the Arbitrator and the Commercial Court with valid reasoning.

On the question of rights *in rem*, the respondents submitted that no third-party rights were involved since the release deeds executed by outgoing partners transferred rights only to continuing partners. The Act does not specifically exclude any class of disputes from arbitration, and disputes concerning subordinate rights *in personam* arising from rights *in rem* are arbitrable. Reliance was placed on ***Vidya Drolia v. Durga Trading Corporation*** [(2021) 2 SCC 1] and several other precedents.

The respondents further contended that the Arbitrator had validly found that the sale deeds (Exhibits A6 and A7) were internal arrangements among partners rather than genuine sale deeds, and the finding on want of consideration was based on due appreciation of evidence unaffected by Sections 91 and 92 of the Evidence Act. The Arbitrator's power to dissolve the partnership was well established under ***V.H. Patel & Co. v. Hirubhai Himabhai Patel*** [(2000) 4 SCC 368]. Since no patent illegality or legal error could be pointed out, the appeal was liable to be dismissed.

Decision of the High Court

The Kerala High Court dismissed the appeal. The Court's reasoning proceeded on several fronts.

First, the Court noted certain incontrovertible aspects. Both parties accepted the dissolution of the partnership and did not seek its revival. The FL-3 licence no longer subsisted. The appellants' real interest was confined to affirming titular interest in properties covered by the two sale deeds (Exhibits A6 and A7).

Secondly, on arbitrability, the Court held that since the Arbitrator had concluded, upon appreciation of evidence, that the sale deeds were merely inter partes paper agreements for security and not genuine conveyances transferring title, no rights *in rem* were involved. The deeds were auxiliary to the partnership arrangement and did not create independent or enforceable rights against the world at large. The contentions based on non-arbitrability and limitation therefore did not arise.

Thirdly, on limitation, the Court found the contention unsustainable as it had been considered in detail and validly rejected by both the Arbitrator and the Commercial Court. The Arbitrator had found the documents void for want of consideration, rendering the question of limitation inconsequential. Further, the arbitration had been initiated pursuant to an appointment by the High Court, and the question of limitation was not raised at the Section 11 stage. Neither party challenged the appointment order.

Fourthly, on the partnership dissolution and the finding of fraud, the Court noted that both parties accepted the dissolution. The Arbitrator had elaborately considered the evidence, found that the partnership deeds were silent regarding cash investment and that income tax returns showed only symbolic investments. The Court held that the terminology used by the Arbitrator ("fraud") was less significant than the substantive conclusion that the arrangement was vitiated. This finding could not be contested under Sections 34 or 37 of the Act.

Fifthly, on the validity of the sale deeds, the Court upheld the Arbitrator's unequivocal finding that Exhibits A6 and A7 were never intended to transfer title but were only paper agreements serving as security for amounts contributed towards the partnership. The Arbitrator had found no oral or documentary evidence as to who paid the consideration, when it was paid, or what amount was paid. The respondents who had a duty to prove passing of consideration failed to do so. The Court observed that it is settled law that a party to a contract may adduce evidence to prove want of or failure of consideration, and the bar under Sections 91 and 92 of the Evidence Act does not apply to such proof.

Finally, the Court reiterated the narrow scope of Section 37, relying on ***Punjab State Civil Supplies Corporation Ltd. v. Sanman Rice Mills*** [2024 SCC OnLine SC 2632], which held that the appellate power under Section 37 is limited to examining whether the Section 34 court acted within its prescribed limits. The appellate court has no authority to reappraise evidence as if sitting in an ordinary court of appeal. An arbitral award cannot be disturbed merely because a different view is possible.

Accordingly, the Court held that no ground had been made out to set aside the arbitral award under Section 34 or to warrant interference with the Commercial Court's order under Section 37. The appeal was dismissed without costs.

Key Takeaways

The decision of the Kerala High Court in ***Lazar Chakkola*** (*supra*) is significant as it reinforces the following principles:

Where an arbitrator concludes, on evidence, that registered sale deeds between partners were merely internal paper arrangements for security and not genuine conveyances, such a finding removes the basis for contentions regarding non-arbitrability on the ground of rights *in rem*. The factual characterisation by the arbitrator determines the nature of the dispute for purposes of arbitrability.

The scope of interference under Section 37 of the Act is extremely narrow. It is confined to examining whether the Section 34 court acted within its jurisdiction, and not to reappraising the evidence or substituting a different view for that of the arbitrator. An arbitral award cannot be disturbed merely because another reasonable interpretation of the evidence is possible.

Objections regarding limitation that have been considered and rejected by the arbitrator and the Section 34 court cannot be re-agitated in an appeal under Section 37, particularly where the arbitrator has found the underlying documents void for want of consideration.

The finding by an arbitrator, after due appreciation of evidence, that no consideration passed under registered sale deeds is a factual conclusion that does not militate against the fundamental policy of Indian law and is not amenable to interference under Sections 34 or 37 of the Act.

An FL-3 licence under the Kerala Abkari Rules is non-transferable. A partnership formed for sharing the privilege of dealing in liquor under such a licence is void under Section 23 of the Indian Contract Act, as it effectively transfers a portion of the licensee's exclusive privilege in favour of other partners.

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