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

% Judgment Reserved on*: 03.02.2026*
Judgment delivered on*: 10.03.2026*
Judgment uploaded on*: As per Digital Signature~*

\+ **FAO (COMM) 75/2024 & CM APPL. 24522/2024**

CENTRAL WAREHOUSING CORPORATION .....Appellant

versus

INDO ARYA LOGISTICS A UNIT OF INDO ARYA CENTRRAL TRANSPORT LTD .....Respondent

Advocates who appeared in this case

For the Appellant : Mr. K. K. Tyagi, Mr. Iftekhar Ahmad and Ms. Garima Tyagi, Advs.

For the Respondent : Mr. Dayan Krishnan, Sr. Adv. with Mr. Parminder Singh, Mr. Ankit Banati, Mr. Aryanshu Vaibhav Gautam, Mr. Sukrit Seth and Ms. Radhika Yadav.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

V. KAMESWAR RAO, J.

1. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act 1996 ("the Act") challenging the order passed by the District judge (Commercial Court-01), Patiala House Court, New Delhi ("the District Judge") in OMP (COMM.) No. 115 of 2021, whereby the

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learned District Judge has set aside the award dated 17.09.2018 passed by the learned Sole Arbitrator.

2. The facts as noted from the appeal are that the appellant and the respondent herein executed an agreement dated 20.12.2006 for providing godowns for a period of three years on reservation dedicated warehousing basis as per the terms of the agreement. Three godowns i.e. godown no.1-ABC, II- ABC and III- ABC were allotted to the respondent.

3. On 18.12.2008, a major fire incident occurred in godown No.1 -A B C at CW Dadri causing heavy damage to the building.

4. On 31.12.2008, the appellant/claimant issued a communication/notice to the respondent stating that the respondent is liable to make good the losses that occurred on the account of poor housekeeping prone to catching fire unabatedly without any measures from the respondent's side inside the said godown to control it. On 22.01.2009, the respondent denied the responsibility of the fire.

5. On 24.01.2009, the appellant requested the respondent to get the demised premises repaired/reconstructed at their cost. On 26.02.2009, the respondent vide letter dated 26.02.2009 advised the appellant to take up the matter with their insurer. On 04.03.2009, the appellant vide a letter informed the respondent that the demised premises would be deemed to continue with the respondent till 12.11.2009 and the respondent would be liable to pay storage charges for said period and thereafter handover the godown in usable condition as per Clause 11 of the agreement.

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6. On 23.03.2009, the respondent again advised the appellant vide their letter dated 23.03.2009 to take up the matter with the insurer.

7. On 29.05.2009, the appellant issued a legal notice dated 29.05.2009 to the respondent demanding payment of storage charges up to 12.11.2009. It stated that in case of any of failure of the respondent in getting the godown constructed/ repaired, the appellant will be left with no option but to get the work done at their risk and cost and also that the bills would be raised on the respondent and in case of their failure to make the payment, appropriate legal proceedings would be taken for recovery of the damages. On 30.06.2009, the respondent replying to the legal notice denied the claim raised by the appellant. On 05.09.2009, another legal notice was issued on behalf of the appellant.

8. The appellant floated a tender after following due process for construction of the godown in question and the tender was awarded vide award letter dated 24.12.2009. The work of reconstruction started from 24.12.2009 and was completed on 15.06.2010 and the Assistant Engineer thereafter on 29.07.2010 issued completion certificate. The construction cell of the appellant corporation handed over the godown to the Warehouse Manager on 31.05.2010.

9. On 08.07.2011, on the basis of bills received from the Executive Engineer, a demand for an amount Rs. 69,80,229/-, incurred for reconstruction of the godown was raised on the respondent. On 30.07.2011, the respondent *vide* a letter denied the liability to pay charges for reconstruction and invoked arbitration.

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10. On 27.08.2011, the Regional Manager of the appellant requested the Corporate Office to appoint an arbitrator for settlement. On 21.02.2012, the MD, CWC appointed R.K.Gupta as an arbitrator. On 20.03.2012, the arbitration proceedings commenced.

11. On 15.04.2014, this Court in Arbitration Petition No. 377 of 2012 allowed the application under Section 11 of the Act, filed by the respondent and directed the parties to hold the arbitration under the aegis of the Delhi High Court Arbitration Centre and appointed a sole arbitrator. On 17.09.2018, the award was passed by the arbitrator wherein, the claim of the appellant was partly allowed.

12. Aggrieved by the same, the respondent filed a petition under Section 34 of the Act before the District Judge in OMP (COMM) No. 115 of 2021. The Court vide its judgment/order dated 22.02.2024 set aside the award.

THE CASE OF THE APPELLANT

13. Mr. K.K. Tyagi, the learned counsel for the appellant submitted that the learned District Judge in the impugned order has ignored the award passed by the learned Arbitrator which exceeds the scope and jurisdiction under Section 34 of the Act. He also submitted that the District Judge has in the impugned order ignored the judgments submitted by the appellant, wherein it has been conclusively held that, in case of destruction of goods/premises by fire (in the premises) handed over to the bailee/tenant, it is for the bailee/ tenant to establish that the fire and consequent damage to the goods/premises is not because of his negligence. He referred to Section

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106 of the Indian Evidence Act, 1872, to contend, the burden of proof will be upon bailee/tenant. He also submitted that, various High Courts have consistently held that, in such type of cases the doctrine of r*es ipsa loquitur* squarely applies and on such plea being taken by the plaintiff, the burden of proof shifts to the defendant.

14. He submitted that the District Judge has committed a serious error in holding that the onus to prove the negligence was to be discharged by the appellant herein and that despite repeated opportunities, the appellant did not lead any additional evidence to prove the additional issue and the appellant did not examine the witnesses from the Fire Department. He submitted that, no additional evidence was required and the appellant herein had made a statement before the Arbitrator that they would be relying upon the evidences which are already on record.

15. He submitted that the District Judge failed to appreciate that the appellant has established by evidence that the control and management of the godown, maintenances of the godown was with the respondent and also that combustible material was stored by the respondent in the godown and all these factors makes a case for shifting of burden of proof on the respondent by rightly applying the doctrine of *res ipsa loquitur*.

16. Mr. Tyagi contended that the District Judge has not only failed to appreciate the evidence but has also relied upon pleas which were neither pleaded nor argued inasmuch as there was a failure on the part of respondent to explain the cause of fire, a fact within the knowledge of the respondent.

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17. With regard to the storage charges, he submitted that, there is nothing in the claim statement that stated that the godown was taken over before November 2009. He submitted that the godown was taken over by the Warehouse Manager after completion of reconstruction on 31.05.2010. He also submitted that the appellant was constrained to float a tender for the construction of the warehouse till November 2009.

18. In support of this he has relied on the following judgments:-

a) ***McDermott International INC v. Burn Standard Co, 2006(11) SCC 181*** ;
b) ***NHAI v. lTD Cement India, (2015) 14 SCC 21***;
c) ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd., 2022(1) SCC 131;***
d) ***State of Punjab v. Modern Cultivator, (1964) 8SCR 273;***
e) ***M. Kuppusamy v. Viswanathan & Others, 1998 Madras Law Journal Reports 768***
f) ***Cochin Port Trust v. Associated Cotton Traders Limited & Ors., AIR 1983 Kerala 154.***
g) ***Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat 1994 (4) SCC 1;***
h) ***Rashtriya Ispat Nigam Limited v. Prathyusha Resources and Infra Pvt. Ltd., (2016) 12 SCC 405;***
i) ***Indian Oil Corporation Ltd. v. Era Construction (India) Ltd., Online Del 2425 ;***

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j) ***Indian Oil Corporation Ltd. v. SPS Engineering Ltd., 31 - 36Online Del 7756;***

k) ***Prathyusha Associates v. Rastriya Ispat Nigam Limited Vizag Steel Plant, 2005 SCC On Line AP 1024;***

l) ***State of Punjab v. Modern Cultivator, (1964) 8SCR 273.***

19. He seeks the prayer as made in the appeal.

THE CASE OF THE RESPONDENT

20. Mr. Dayan Krishnan, learned Senior Counsel appearing for the respondent submitted that, on a bare perusal of the issue framed on 28.11.2016, it is clear that the onus of proof for establishing alleged carelessness and negligence on part of the respondent with regard to the fire incident was on the claimant/appellant, which the appellant had failed to discharge.

21. He submitted that the appellant sought to lead evidence regarding the aforesaid issue, however, no such evidence was produced. The appellant even moved an application seeking a last opportunity to produce a fire report with regard to the fire incident dated 18.12.2008. He also submitted that, for reasons best known to the appellant, it decided not to lead any additional evidence, which aspect has also been recorded by the Arbitral Tribunal in the order dated 06.03.2017. Therefore, no evidence was led by the appellant to attribute any liability on the respondent in respect of the fire incident. As such, the said issue could not have shifted the burden of proof on the respondent.

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22. Mr. Krishnan also stated that the District Judge has rightly observed that there is nothing on record to show that all standard methods of fire safety like fire extinguishers or other fire fighting instructions/devices were installed by the appellant in the godown in question before handing over possession of the same to the respondent. The appellant did not even bring on record the No Objection Certificate of the Fire Department which was obtained by it before handing over possession.

23. He submitted that the agreement was a license and not a lease. The Arbitrator, in contradiction, erroneously held that the subject godown was in exclusive control of the respondent. The said finding is also in direct contravention to Clause 5 of the Agreement which required the godown to be under "*joint locking*" of the parties and further provided that, it was the duty of the appellant to provide security for the subject property. He also submitted that neither was any staff of the appellant deputed at the godown, nor was any issue raised regarding the material being stored in the godowns. Moreover, the appellant was responsible for the insurance of the subject property which was admittedly not done. The liability of respondent was only to ensure insurance of the goods stored in the godown.

24. He contended that the Arbitrator without giving any reasons came to the conclusion that; "the materials stacked in the demised premises was combustible and prone to fire hazard". As per the appellant, in para 6 of the Evidence by way of Affidavit of CW-1, it had been averred that the items stored in the premises "might have caused/contributed to fire incidents on 18.12.2008". There is no basis to ascertain the same and it is only an

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averment without any basis. Even from the witness examination it was evident that the respondent did not store anything that was not permissible being hazardous. The finding of the Arbitrator that the goods stored by the respondent were "hazardous" was also in direct contravention of the List of Notified Commodities submitted to the Arbitral Tribunal by the appellant. In fact, while holding that the "*cause of the fire was unknown*", the Arbitrator erroneously held the respondent is liable for the fire without providing any reasons. He submitted that in view of this, the District Judge has rightly held that the principle of *res ipsa loquitur* was not applicable in the present case.

25. He submitted that the Courts have repeatedly held that the principle of *res ipsa loquitur* should not be applied too liberally. It is trite law that in order to sustain an action of damages, it must, in the first instance be proved that the respondent was negligent. The onus of proving negligence lay on the party suing and in the absence of any evidence led by the party suing to this effect, the case will not fall under the principle of *res ipsa loquitur*.

26. Agreeing with the impugned order, he submitted that the District Judge has thus rightly observed that the respondent was not in control/ possession of the premises in question and so the award of charges for the period, for which the respondent was not in possession, is patently illegal.

27. According to him, the award was rightly set aside as the dispute is barred by limitation, inasmuch as, the appellant became aware of respondent's stand on 22.01.2009; however, it did not take any steps to invoke arbitration within a period of three years. Infact, no notice under Section 21 of the Arbitration and Conciliation Act, 1996 was invoked by the

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appellant.

28. In support of his submissions Mr. Krishnan has relied upon the following judgments:-

i. ***Mohammad Habib vs Ram Narain Lall And Ors., AIR1959PAT 348 ;***
ii. ***Madhavi v Koran, 1971 ACJ 111;***
iii. ***Sunderlal v Firm DayalMeghji& Co., 1962 MPLJ 1 87;***
iv. ***Dr. Sohan Singh and Ors v Sardar Joginder Singh and Ors SB Civil First Appeal 99/1995 dated 22.04.2024*** passed by Rajasthan High Court***.;***
v. ***PSA SICAL Terminal (P) Ltd. v. V.O Chidambranar Port Trust, (2023) 15 SCC 781;***
vi. ***Madhavi v. Koran,1970 SCC OnLIne Ker 3;***
vii. ***Sohan Singh and Other v. Sardar Joginder Singh and Others, 2024 SCC OnLIne Raj 3753 ;***
viii. ***Sunderlal, v. Firm Dayalal Meghji & co., Raipur, LPA No.40 of 1960***
ix. ***Ramesh Kumar Jain v. Bharat Aluminium Company Limited (BALCO), 2025 SCC OnLine SC 2857.***

29. He seeks dismissal of the appeal.

ANALYSIS AND CONCLUSION.

30. Having heard the learned counsel for the parties and perused the record, the issue which arises for consideration is whether the learned District Judge was justified in setting aside the Arbitral Award dated 17.09.2018 passed by the Sole Arbitrator.

31. At the outset, it may be stated that the learned Arbitrator had granted two claims in favour of the appellant - an amount of Rs.69,80,229/- and also an amount of Rs.21,82,763/- under the head 'Storage Charges' for the period

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between 01.01.2009 to 12.11.2009. The learned District Judge has set aside both the claims. The learned Arbitrator granted the amount of Rs. 69,80,229/- primarily on the ground that the respondent herein was responsible for the fire.

32. The claim by the appellant for the amount of Rs. 69,80,229/- is primarily toward the reconstruction repair cost of the godown i.e., No. 1 - ABC. The learned Arbitrator had invoked the maxim *res ipsa loquitur* to hold that it was the respondent who was careless and negligent for the fire to break out and as such the respondent is liable to pay the said amount.

33. What important is that the learned District Judge in paragraph no. 31 of the impugned order has noted the proceedings which were held before the Arbitrator on 28.11.2016, which records that an additional issue at the behest of the appellant was framed in the following manner:

i. Whether the fire incident dated 18.12.2008 in the premises in question occurred due to the carelessness and negligence of the respondent.

34. This issue as stated above was framed at the behest of the appellant herein. While framing the issue, the learned Arbitrator observed that a perusal of the records reveals that the parties have not placed on record any evidence to show as to whose negligence and carelessness lead to the fire incident on 18.12.2008 in the premises in question. He also noticed that there is material on record to indicate that, after the fire incident, fire brigades were called from Gautam Buddha Nagar and Greater Noida for

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controlling the fire.

35. The aforesaid clearly reveal that the additional issue was a specific issue to determine whether the fire incident had occurred due to the carelessness and negligence of the respondent herein. The parties were given opportunity to lead evidence. The case of the respondent for leading evidence was by stating that they shall take a call about producing additional evidence after the appellant concludes its evidence.

36. The learned Arbitrator granted the appellant/claimant, one more opportunity to lead evidence. However, the appellant/claimant did not lead any evidence on the additional issue. Resultantly, the respondent herein also did not lead any evidence on the issue.

37. What is important is the learned Arbitrator by referring to the judgment of the Supreme Court in ***State of Punjab v. Modern Cultivators AIR 1965 17*** and ***Syed Akbar v. State of Karnataka AIR 1979 SC 1848***, has held that the godown in question was in the exclusive control and management of the respondent where the unusual fire incident occurred on 18.12.2008 and the entire stock of M/s Pantaloon India Ltd. as well as the godown were destroyed. Hence, the respondent is responsible for maintaining the demised premises - both interior and exterior, electrical and other fittings therein in the same condition it was handed over to the respondent.

38. He has also held that the respondent withheld material and vital evidence of M/s Pantaloon India Ltd. Therefore, the Arbitrator through a

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presumption under Section 144G of the Indian Evidence Act, 1872, held against the respondent to the effect that, if the said evidence was produced, it would not have been favourable to the respondent. The Arbitrator, in this background decided that the burden of proof shifts to the respondent for the unusual fire incident dated 18.12.2008, and held that the incident tells its own story and is by itself proof of carelessness and negligence on the part of the respondent. The learned Arbitrator rejected the contention of the respondent that the claimant/appellant had failed to prove the negligence of the respondent, holding that the ingredients for the applicability of the doctrine of *res ipsa loquitur* are made out.

39. We find that the learned Arbitrator while holding the respondent to be negligent/careless has summed up his finding in paragraph 6.6 as under:

> *"6. 6. Let us apply the above principles to the facts of this case. Here, the godown in question was in exclusive control and management of the Respondent, where the unusual fire incident occurred on 18.12.2008 and the entire stock of M/ s. Pantaloon Retail India Ltd. as well as the godown were destroyed. The Respondent was responsible to maintam the demised premises (both interior and exterior) electrical and other fitted therein, in good usable condition and was to hand over the same after expiry of reservation in such condition as it existed at the time of handing over of the possession of the premises to the Claimant in terms of Clause 11 of the Agreement. It has further been held that the material stacked in the demised premises was combustible and prone to fire hazard, as is evident from M/s. PRIL's letter dated 26.12.2008 (Ex.'CW-1/2) to the Respondent.*
>
> > *(i) The cause of fire is unknown and the Respondent has not given any explanation for the same. The Respondent has also withheld material and vital*

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evidences of M/ s. Pantaloon Retail India Ltd. Therefore, a presumption under Section 114(g) of the Evidence Act is liable to be raised against the Respondent, to the effect that if the said evidence was produced, it would not have been favourable to them.
(ii) In the above background, the burden of proof shifts on the Respondent. The unusual fire incident dated 18.12.2008 in the godown, tells its own story and it by itself is a proof of carelessness and negligence of the Respondent. The requisite ingredients for the applicability of the doctrine of res ipsa loquitur are made out and it is held that the fire incident occurred on 18.12.2008 in the godown due to the carelessness and negligence of the Respondent and they are liable for the consequences thereof. The contention that the Claimant has failed to prove their negligence, is rejected.
(iii) The Supreme Court's decisions goveming the law relating to the applicability of the doctrine of res ipsa loquitur have already been noticed above. Learned counsel for the parties also cited various High courts' judgments,· in support of their respective contentions. Each case depends on its own facts and detailed reference to these judgments is not required."

40. The learned District Judge has in paragraph 38 to 40 of the impugned order has held as under:

"38. As per clause 9 of the agreement, the petitioner shall see at the time of occupation of the premises that electrical fitting are in perfect order and nothing is broken or missing. However, in the present case, there is nothing on record that the all standard methods of fire safety viz fire extinguishers and other firefighting instruments/devices were installed by the respondent in the godown in question before handing over the possession of the same to the petitioner. The agreement executed between the parties is silent in this regard. Also the

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respondent has not placed on record that any No Objection Certificate of Fire Fighting Department was obtained by the respondent before handing over the possession of the god own in question to the petitioner. Clause 7 of the agreement reflects that it was the duty of the respondent to deploy round the clock security in the warehouse campus. After the alleged fire incident, there is nothing on record that any information about this fire was given to the Police Department and also to the Fire Department by the respondent. There is nothing on record as to what efforts were made for controlling the fire. Further, there is nothing on record as to what was · -ie possible cause of this fire. The Ld. Sole Arbitrator has also observed in the award that the cause of fire was unknown. Further despite opportunity having been granted by the Ld. Sole Arbitrator, no evidence was led by the respondent to establish that before handing over the possession of the demised godown to the petitioner, the respondent has installed all standard methods of fire safety viz fire extinguishers and other firefighting instruments/devices in the godown in question. There is nothing on record that the cause of fire in the godown in question was ascertained by any agency. There is also nothing on record that the office of Fire Brigade, Gautam Budh Nagar, Greater Noida (U.P.) which was stated to have been called to control the fire on 18.12.2008, has submitted any report with respect to the cause of fire in the godown in question.

39.In a case titled as Delhi Airport Metro Express Pvt. Ltd. Vs. Delhi Metro Rail Corporation Ltd. in CA No.5628/2021 decided on 09.09.2021. the Hon'ble Supreme Court of India has observed as follows :-

> *"29. Patent illegality should be illegality which goes to the root of the matter. In olher words, every error of law committed by the Arbitral Tribunal would not fall ·within the expression 'patent illegality'. I.ikewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of faw not linked to public policy or public interest is beyond the scope of the*

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expression 'patent illegality'. What is prohibited is for courts to re- appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award 171e permissible grounds for interference with a domestic award under Section 34 (2-A) on the ground of patent illegality is ·when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which ewe not supplied to the other party is a facet of perversity falling within the expression 'patent illegality'.

40.Besides being no evidence Jed by the respondent before the Ld. Sole Arbitrator, no material was placed before the Ld. Sole Arbitrator to establish the possible cause of this fire. There is no material to show that it was an accident due to the negligence on the part of the petitioner. No fact or evidence came to the knowledge of the court that there was any negligence on the part of the petitioner. Once the respondent has failed to discharge the initial burden to prove the aforesaid issue and also has not proved on record that it had installed all fire safety measures in the godown in question before handing over the possession of the same to the petitioner or that any agency has submitted the report qua the cause of fire in the godown in question, the court is of the opinion that it would be wholly unjustified to arrive at the conclusion that it was due to the negligence on the part of the petitioner, the fire incident has taken place in the godown in question or that the petitioner is liable to pay damages for the reconstruction and repair of the

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demised godown to the respondent due to fire incident. Hence, the Law relating to the applicability of the doctrine of res ipsa loquitur docs not apply to the facts of the present case and the petitioner cannot be held responsible for the fire in the godown. The findings given by the Ld. Sole Arbitrator on res ipsa loquitur suffer for patent illegality."

41. Mr. Dayan Krishnan, in support of his submission that the learned District Judge is justified in holding that the Arbitrator has erred in concluding that the respondent was careless and negligent on the principle of *res ipsa loquitur*, has relied upon the judgment of the Rajasthan High Court in ***Sohan Singh and Others (Supra)***, wherein the learned Single Judge has held as under:

> *"10. In Mohammad Habib v. Ram Narain Lall, AIR 1959 Pat 348; the plaintiff had let out his house to the defendant on monthly rental. The defendant was a fruit seller. In February, 1949 the rented premise was burnt by a fire and the case of plaintiff was that the fire was caused due to the negligence of the defendant. The trial court dismissed the suit on the ground that the plaintiff failed to prove negligence on the part of the defendant, however, the first appellate court reversed the finding of the trial court and the matter went before Hon'ble Patna High Court in second appeal. In Para-3 of the judgment, Hon'ble Patna High Court succinctly discussed the legal position, especially, applicability of the dictum of principle of res ipsa loquitur. Para-3 of the judgment is being reproduced below:—*
>
> > *"3. In our opinion, the lower appellate court misdirected itself on a point of law in throwing the onus of proof upon the defendant to show that there was absence of negligence. It was argued on behalf of the respondents that the doctrine of res ipsa loquitur applies to this case and so it is sufficient for the plaintiffs to prove the accident and nothing more, and unless a satisfactory explanation is given by the*

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defendant, the plaintiffs are entitled to a decree for damages. We do not think that this argument is correct. The doctrine of res ipsa loquitur has been explained by Erle C.J., in the leading case of Scott v. London Docks Co., (1865) 3 H. and C. 596 (at p. 601) as follows:

> *'There must be reasonable evidence of negligence, but where the thing is shown to be under the management of the defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care."*

The doctrine has been held to apply in a case where bags of flour fell from warehouse windows (Bynre v. Boadle, (1863) 2 H. and C. 722) and also in a case where stones were found in edible commodity (Chaproniere v. Mason, (1905) 21 TLR 633) and similar other situations. But in the present case it is obvious that the doctrine cannot apply and unless the plaintiffs establish negligence on the part of the defendant, no decree for damages can be granted to the plaintiffs in tort. In Sochacki v. Sas, (1947) 1 All ER 344) it was observed by lord Goddard C.J. as follows:

> *"Counsel for the defendants argued that I am bound to apply the doctrine of res ipsa loquitur, but I do not think this is a case of res ipsa loquitur. Everybody knows fires occur through accidents which happen without negligence on anybody's part. There is nothing here to show that the plaintiffs left any improper fire in his room, any larger fire than usual, a fire which was too large for the grate, or anything like that. There was a fire burning in his room. He left his room for two or three hours. I do not consider that the doctrine of res ipsa loquitur could possibly apply to a case such as this."*
>
> *We are, therefore, of opinion that the doctrine of res ipsa loquitur does not apply to this case and the normal rule of evidence must prevail. The onus of proving negligence lay on the plaintiffs and in the absence of any evidence led by the plaintiffs to this effect the case must fail. The*

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finding of the lower appellate court in the present case is that the plaintiffs' version of the origin of the fire must be rejected and so also the defendants' version with regard to the origin of the fire cannot be accepted. The finding, therefore, is that nobody knows as to how the fire started and in these circumstances we think that the onus which lay on the plaintiffs for proving negligence on the part of the defendant has not been discharged.

In this view we are supported by the decision of the Madras High Court in the East India Distilleries and Factories Ltd. v. P.F. Mathias, ILR 51 Mad 994 : (AIR 1928 Mad 1140) where the plaintiff lot his house to the defendant Company to be used as liquor warehouse, and during the period of the lease, one night in the absence of a watchman, the liquior store, room and the whole house were destroyed by fire. It was held in these circumstances that though under a general covenant lessee would under the English law be liable for all damage, including one arising from fire, yet under Section 108(e) of the Indian Transfer of Property Act, he is not liable for damage by fire in the absence of proof that the fire was due to his negligence."

11. In Mrs. Kalyani Raj an v. Indraprastha Appollo Hospital, (2024) 3 SCC 37 : (AIROnline 2023 SC 927), though, a case of medical negligence and claim for damages; the Hon'ble Supreme Court in para-29 stated as follows:—

"29. Insofar as me applicability of principles of Res Ipsai Locutor, in the fact and circumstances of the case, it is to bear in mind that the principles get attracted where circumstances strongly suggest partaking in negligent behaviour by the person against whom an accusation of negligence is made. For applying the principles of Res Ipsa Locutor, it is necessary that a 'Res' is present to establish the allegation of negligence. Strong incriminating circumstantial or documentary evidence is required for application of the doctrine."

12. Considering legal position above and the facts of this case, it is evident that there is complete lack of evidence that the fire

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took place due to negligence of the defendant even to the extent expected of a prudent person to take precaution to prevent damage to his own property. Therefore the plaintiff has failed to establish the duty on the part of the defendant, failure to maintain whereof the incident took place.

Point No. 2:— As noticed above, principle of res ipsa loquitur would not apply in the facts and circumstances of this case in absence of evidence on record disclosing strong incriminating circumstantial evidence. No expert opinion was taken to establish the reason of fire.

13. Learned counsel for the appellant has relied upon the judgment of Hon'ble Madhya Bharat High Court in Gwalior and Northern Indian Transport Co. Ltd. v. Dinkar Durga Shankar Joshi, AIR 1955 MB 214. The judgment was delivered in quite different facts and circumstance of that case, which was a case of motor vehicle accident resulting into death and claim for damages. Even in Northern Indian Transport Co. Ltd. (supra), Hon'ble High Court said that the maxim res ipsa loquitur is merely a rule of evidence affecting onus. It does not alter the general rule that the burden of proof of the alleged negligence rests upon the plaintiff.

14. Learned counsel for the appellant has next relied upon the case of Bondar Singh v. Nihal Singh, (2003) 4 SCC 161 : (AIR 2003 SC 1905) for his submission that in absence of pleading evidence cannot be looked into.

15. Contention of learned counsel is that the trial court has accepted the evidence of defendant-respondent, though, it was not pleaded. Since the trial court judgment is not being sustained for aforesaid reason it is not necessary to delmn into that. Learned counsel for the appellant has next relied upon the judgment of RM. Vishwanathan v. Mandattil Geetha, 2017 SCC OnLine Ker 30853 : (AIR Online 2017 KER 70). In Vishwanathan's case the fire had taken place in a bakery. It was observed that undisputedly Oven was working at the time of fire. Evidently the said case is distinguishable in the facts of the present case.

16. In view of the discussions made above and conclusions on

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points raised, this Court does not find any reason to interfere in the impugned judgment and decree, hence, this appeal is dismissed being devoid of any merit."

42. The Supreme Court in the case of ***State of Punjab (Supra)*** had applied the rule of *res ipsa loquitur* by holding that in the case therein the canal was admittedly in the management of the defendant therein and the canal banks would not have been breached if those in management had taken proper care. The Supreme Court held that in such a case, the rule would apply and the breach itself would be *prima facie* proof of negligence (***Stock v. London Dock Co.***). But it also observed that the defendants should show the breach was due to an act of God or an act of a third party or any other reason,which would show that it was not negligent, which the defendant therein failed to do. The Court also clarified that the rule of *res ipsa loquitur* may not apply where it is known how or what caused the damage, as was held in ***Barkway v. South Wales Transport Co. Ltd. 1951, All India Eng Report 392***.

43. Similarly, in ***Syed Akbar (Supra)***, the Supreme Court was considering a matter where the accused was called in for an offence under Section 304A of Indian Penal Code, 1860 (IPC) was driving a bus causing an accident resulting in the death of a child who was crossing the road. The Court accepted the explanation given by the accused in his defence that the accident was not caused on account of his negligence, and held that for application of the maxim *res ipsa loquitur* no less important a requirement is that the *res* must not only speak negligence but pin it on the defendant.

44. We find that the Supreme Court in its latest opinion in the case of

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State of UP v. Mcdowell Limited, 2022 (6) SCC 223, referring to the principle of *res ipsa loquitur* has stated that there are cases in which an accident speaks for itself. In such cases, it would suffice for the plaintiff to prove the accident and nothing more. It will be then for the defendant to establish that the accident happened due to some other cause than of his own negligence. The genesis of the litigation in this case was that, a fire accident took place in the godown of the distillery of the respondent company on 10.04.2003 and 35462 cases of Indian Made Foreign Liquor (IMFL) of different brands were destroyed in the fire. After receiving initial reports that the fire possibly took place due to short circuit of electricity, the government proposed to recover the amount of excise duty lost, due to such destruction of liquor from the respondent company.

45. The respondent company contended that there was no negligence on its part and, therefore, no case of recovery of alleged loss of excise duty was made out under Rule 7(11) of the Uttar Pradesh Bottling of Foreign Liquor Rules, 1969 (the 1969 Rules) and Rule 709 of the Uttar Pradesh Excise Manual (the Excise Manual). However, the Excise Commissioner by order dated 11.07.2006 rejected the submission of the respondent and raised a demand of Rs.6,38,32,449.44 towards loss of excise revenue on account of destruction of liquor. Accordingly, the District Magistrate, Shahjahanpur asked the respondent company to deposit the amount within one week.

46. The High Court in its impugned order dated 10.04.2017 had allowed the writ petition filed by the respondent company with the finding that, Rule 11(a) of the 1969 Rules and Rule 709 of the Excise Manual was not

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applicable in the matter because there was no wastage in handling operations of bottling and storage of IMFL; and that Rule 709 of the Excise Manual was not attracted for which negligence was required to be shown and the order passed by the Excise Commissioner was based on conjectures and without any cogent evidence about negligence on the part of the writ petitioner/respondent company; and that the incident was nothing but as an act of God. The High Court accordingly, set aside the impugned orders and demand of recovery towards loss of excise revenue.

47. In appeal, the Supreme Court by invoking the principle of *res ipsa loquitur* in paragraphs 82-89 and 93 held as under:-

> *"Res ipsa loquitur*
>
> *82. In order to understand the operation of the maxim res ipsa loquitur, we may usefully refer to a couple of the decisions of this Court. Of course, these decisions related with vehicular accidents but the principles therein remain fundamental in operation of res ipsa loquitur.*
>
> *83.* ***Shyam Sunder and Ors. v. The State of Rajasthan: (1974) 1 SCC 690*** *had been a case where the victim was travelling in a truck whose engine got fire and while jumping from the vehicle, he struck against a stone on the side of the road and died on the spot. The High Court in that case held that merely for the truck catching the fire would not be evidence of negligence on part of the driver; and that res ipsa loquitur had no application. However, this Court, inter alia, pointed out and held as under:-*
>
> > *"**9.… The maxim res ipsa loquitur is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant. The mere fact that the cause of the***

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accident is unknown does not prevent the plaintiff from recovering the damages, if the proper inference to be drawn from the circumstances which are known is that it was caused by the negli-gence of the defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then the maxim res ipsa loquitur applies.*"*

84. This Court then quoted the following passage from the case of Scott v. London & St. Katherine Docks: (1865) 3 H&C 596, 601: -

> *"... where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."*

85. This Court further explained the operation of this maxim for importing strict liability into negligence cases and observed:-

> *"10. …..The mere happening of the accident may be more consistent with the negligence on the part of the defendant than with other causes. The maxim is based on commonsense and its purpose is to do justice when the facts bearing on causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant (see Barkway v. S. Wales Transo [(1950) 1 All ER 392, 399]).*"

86. In ***Pushpabai Purshottam Udeshi and Ors. v. M/s. Ranjit Ginning & Pressing Co. (P) Ltd. and Anr. (1977) 2 SCC 745****, this Court again explained the application of the principle of res ipsa loquitur and explained various features thereof in the following words: -*

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"6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to someother cause than his own negligence. Salmond on the Law of Torts (15th Ed.) at p. 306 states:

"The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Ed., Vol. 28, at p. 77, the position is stated thus:

> ***"An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence 'tells it own story' of negligence on the part of the defendant, the story so told being clear and unambiguous".***

Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his

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part…..

87. For what has been discussed hereinabove, this much is apparent that in this case, the warehouse in question indeed got engulfed in fire and that led to destruction of the liquor stored therein. Here, the respondent company could be held liable to pay the excise duty on the liquor destroyed in fire only if it could be held negligent in not ensuring safe custody of the stored liquor. As regards this aspect, the fact that Department had control and supervision over the distillery and godown would not absolve the respondent of its liability. Further, the fire incident in question cannot be termed as an "act of God".

88. The matter then boils down to the question if the fire incident could be said to be an inevitable accident. For that matter, we need to examine as what had been the normal and reasonable requirement for safe custody of the liquor in question and as to what could be deduced from the surrounding factors.

88.1. One of the basic factors to be noticed is that the goods in question were not ordinary goods but had been containing alcohol which, by its very nature, is highly inflammable. Therefore, a particular nature of care which might be sufficient as regards ordinary goods may not be adequate or sufficient for the goods in question.

88.2. On 19.09.2002, the Assistant Electricity Inspector who conducted periodical inspection of the premises in question made two observations. One of them was a minor aspect that 'Caution' plate was not placed at certain prominent place but the other observation was a significant one that at one point of distribution panel, earth wiring was found with thin wire; and it was suggested that same should be removed and strip earthing should be done.(vide paragraph 7.1 supra) On 01.03.2003, while issuing No Objection Certificate, the Fire Brigade Officer, inter alia, observed that firefighting equipments were at right place and were in

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working condition but in future, they should be tested in fire station Shahjahanpur before refilling; and it was also suggested that Foam Installation should be provided for better management of firefighting arrangements.(vide paragraph 7.3 supra.)

88.3. From the material placed on record, it is not forthcoming if strip earthing had indeed been carried out, though the respondent company generally stated in its letter dated 23.09.2002 that what was pointed out by the Assistant Electricity Inspector had been carried out. As to when strip earthing was done and in what manner is not forthcoming. Further, it is also not forthcoming if Foam Installations were provided, as suggested by the Fire Brigade Officer. In view of extra care required of the highly inflammable material, significance of none of these aspects could be gainsaid.

88.4. Though it is true that as per the suggestions made in the reports relating to the fire incident in question, exact cause of fire could not be ascertained but there had been indications that the officers, including the Excise Officer and Station House Officer had seen burnt wires; and it was reported that the fire 'possibly' took place because of short circuit. Taking note of these facts as also the other facts that godown was an old one and the roof of the godown was made of asbestos sheets, the Excise Commissioner, in his order dated 11.07.2006, inferred that short circuit could have taken place in old electric wiring in the godown and in that context, observed that the licencee had not arranged the fire proof electric equipments of good quality, which led to the incident in question.

89. A few words as regards 'short circuit' would also be apposite at this juncture.

89.1. Short circuit is explained in the Dictionary of Technical Terms19 by F.S. Crispin as follows :-

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> *"Short circuit (elec.): A path of low resistance placed across an electrical circuit causing an abnormal flow of current."*

89.2. In McGrow-Hill Encyclopedia of Science and Technology(6th Edition, volume 16, p 387), the relevant features of short circuit are stated as under:-

> *"An abnormal condition (including an arc) of relatively low impedance, whether made accidentally or intentionally, between two points of different potential in an electric network or system. SEE CIRCUIT (ELECTRICITY); ELECTRICAL IMPEDANCE. Common usage of the term implies an undesirable condition arising from failure of electrical insulation, from natural causes (lightning, wind, and so forth), or from human causes (accidents, intrusion, and so forth). From an analytical viewpoint, however, short circuit represent a severe condition that the circuit designer must consider in designing an electric system that must withstand all possible operating conditions. The short circuit thus is important in dictating circuit design parameters (wire size and so on) as well as protective systems that are intended to isolate the shorted element. SEE ELECTRIC PROTECTIVE DEVICES; ELECTRICAL INSULATION; LIGHTNING AND SURGE PROTECTION."*

89.3. In the present case, even when the exact cause of fire could not be ascertained, the indications in the reports like that of Assistant Excise Commissioner dated 02.08.2003(vide paragraph 11 supra) that burnt cables were seen in the debris and possibility had been of short circuit, the only inference could be about some fault or shortcoming in electric installations (equipments and/or wiring) which led to the abnormal flow of current and thereby, to the fire incident in question.

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90 to 92 xxx xxx xxx

93. Hence, we have no hesitation in disapproving the order of the High Court and in endorsing the views of the Excise Commissioner in the order dated 11.07.2006."

48. Similarly, in another recent opinion, the Supreme Court in the case of ***Sanjay Gupta & Others v. State of Uttar Pradesh & Others, (2022) 7 SCC 203*** in paragraph 53 to 56 held as under:-

"53. The argument of Mr Bhushan that the Court Commissioner has not given any conclusive finding on the cause of the fire is not relevant in determining the civil liability. The maxim res ipsa loquitur would be applicable as organising an exhibition of such substantial magnitude without proper and adequate safety factors which may endanger the life of the visitors, has been rightly found by the Court Commissioner, an act of negligence including negligence of the officers of the State.

54. In Shyam Sunder v. State of Rajasthan,(1974) 1 SCC 690 this Court observed that the maxim res ipsa loquitur is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant. The mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant. It was observed as thus: (SCC pp. 693-94, paras 9-11)

> *"9. The main point for consideration in this appeal is, whether the fact that the truck caught fire is evidence of negligence on the part of the driver in the course of his employment. The maxim res ipsa loquitur is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant. The mere fact*

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that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if the proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then the maxim res ipsa loquitur applies

10. The maxim is stated in its classic form by Erle, C.J, Scott v. London & St Katherine Docks, (1865) 3 H&C, 601 where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.

The maxim does not embody any rule of substantive law nor a rule of evidence is perhaps not a rule of any kind but simply the caption to an argument on the evidence Lord Shaw remarked that if the phrase had not been in Latin, nobody would have called it a principle. The maxim is only a convenient label to apply to a set of circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. The principal function of the maxim is tu prevent injustice which would result if a plaintiff were invariantly compelled to prove the precise cause of the accident and the defendant responsible for it even when the facts bearing on these matters are at the outser unknown to him and ten within the knowledge of the defendant. But though the parties relative access to an influential factor, it is not controlling Thus, the fact that the much at a loss to explain the accident or

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himself died in it does not preclude an adverse inference against him if the odds otherwise point to his negligence (see John Fleming, The Law of Torts 4th Edn, p. 264). The new happening of the accident may be more consistent with the negligence on the past of the defendant than with other causes. The maxim is based on commonsense and is purpose is to do justice when the facts bearing on causation and on the care exercised by dolendant are at the outset unknown to the plaintiff and are or ought to be withen the knowledge of the defendant.

11. The plaintiff merely proves a result, not any particular act of omission producing the result. If the result, in the circumstances in which he proves it, makes it more probable than not that it was caused by the negligence of the defendants, the doctrine of res ipsa loquitur is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability."

55. Further, this Court in Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd. held that where the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant, such hardship is sought to be avoided by applying the principle of res ipsa loquitur. It was observed thus: (SCC pp. 750-51, para 6) Page: 245

"6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the

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accident speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Edn.) at p. 306 states:

The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused."

In Halsbury's Laws of England 3rd Edn. Vol 28, at p. 77. para 79 the position is stated thus:

79. Inference of defendant's negligence. An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them la that the injury complained of was caused by the defendant's negligence, or where the event charged as, negligence "tells it own story of negligence on the part of the defendant, the story so told being clear and unambiguous. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part.

56. The said aspect of res ipsa loquitur has also been commented upon by the Court Commissioner holding the Organisers and the State liable to apportion the liability. Thus, we are of the opinion that the report of the one-man Commission is not suffering from any infirmity so as to absolve the Organisers from their responsibility of organising the exhibition."

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49. It is to be noted that the Supreme Court in both the decisions has referred to its earlier decision in ***Shyam Sunder and Others (supra)*** which has also been referred to by the learned Arbitrator. A reading of the judgment would reveal that when an accident is shown to have occurred and the circumstances of the cause of action is primarily within the knowledge of the defendant, then the mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages. If proper inference can be drawn from the circumstances which are known to the defendant, it can be concluded that the accident occurred because of the negligence of the defendant. In other words, sometimes the fact that the accident occurred may itself constitute evidence of negligence. It is then that the maxim *res ipsa loquitur* applies.

50. In both the cases, cited above, the Supreme Court has highlighted negligence through surrounding circumstances.

51. In the case in hand, though the cause of fire is unknown, the plea of the appellant was that inflammable materials were stored in the godown and the respondent was in exclusive possession of the demised premises and the defendant / respondent has the knowledge of the circumstances of the fire.

52. Now, the questions would be:

(i) whether in the circumstances, an inference could be drawn that the fire was caused by the negligence of the respondent/ defendant. In other words, whether the accident itself constitutes any negligence on the part of the respondent for maxim

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res ipsa loquitur to apply;

(ii) whether the learned District Judge has erred in appreciating the plausible view taken by the learned Arbitrator in holding that the demised premises (godown) was in the exclusive possession of the respondent and that itself constitutes surrounding circumstances for the maxim *res ipsa loquitur* to apply in the facts of the case in hand.

53. In the above cited cases of the Supreme Court, there were material facts available on record (surrounding circumstances) to draw inference against the respondent(s) therein. When the doctrine of *res ipsa loquitur* is applied, the initial onus will be on the respondent/defendant to prove that there is no negligence on its part for the onus to then shift to the appellant /plaintiff to prove otherwise.

54. To answer the above two issues, we need to examine the arbitral award. It is seen that the learned Arbitrator in paragraph 6.3 of the award held that the respondent under Clause 5 (b) & (c) read with Clauses 6, 8 & 11 of the agreement was in exclusive control and management of the godown in question. In paragraph 6.3(v) of the award, the learned Arbitrator has held, the claimant had no power to go inside the godown for inspection except with prior permission of the respondent and only during the reasonable hours, whenever necessary under Clause 8. Whereas, the respondent was entitled to operate the godown as per Clause 13 & 14 of the agreement. The Arbitrator also held that the respondent had separate electric meter and permission to install their own generator and under Clause 11, it

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was the respondent's responsibility to maintain the demised premises, (interior and exterior) electrical and other fittings therein in good usable condition. The Arbitrator held that, as per the clauses in the agreement, it is abundantly clear that the demised premises was in exclusive control and management of the respondent and the claimant only had a limited right to conduct inspection with prior permission of the respondent.

55. On the issue of 'joint locking', the learned Arbitrator has held that, it is not the respondent's case that the subject property was not in their exclusive control and management during the relevant time. All the clauses of the document are to be read together as a whole, giving each clause a meaningful interpretation. According to him it has already been held that when the components (b) & (c) of Clause 5 are read with Clauses 6, 8 & 11 of the agreement, it abundantly shows that the respondent was in exclusive control and management of the godown in question during the relevant period. According to him, the expression 'joint locking' in Clause 5, component (a) is to be read harmoniously with the other clauses of the agreement and when so read, it would only mean that the respondent was in exclusive control and management of the demised premises and the claimant was in constructive possession (in terms of the agreement dated 20.12.2006).

56. The learned Arbitrator reading Clause 11 of the agreement held that the respondent's submission that, it was only required to maintain the electrical fittings and not the godown, is liable to be rejected and that there is no evidence to show that the respondent has ever carried out any maintenance of the demised premises which was in their exclusive control

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and management.

57. On the issue of the applicability of *res ipsa loquitur*, the Arbitrator held that the godown in question was in exclusive control and maintenance of the respondent and the respondent was responsible for the maintenance of the subject property under Clause 11 of the agreement and the respondent was also liable to hand over the property in a good usable condition. The cause of fire being unknown and in this background the burden of proof shifts upon the respondent.

58. The learned District Judge while considering the issue, discussed the legal principle with regard to the liability arising out of or due to negligence, and was of the opinion that the question whether the respondent was liable because of its negligence could not have been determined without dealing with the other aspects related with exceptions and defence to the allegation of negligence. The Court held that the initial burden of proof is upon the plaintiff under Section 101 of the Indian Evidence Act, 1872. It observed that under Section 3 of the Act, the fact which is neither proved nor disproved is not proved and accordingly, the issue "whether the fire incident dated 18.12.2008 in the premises in question occurred due to the carelessness and negligence of the respondent? OPC" is neither proved nor disproved and hence not proved. Therefore the learned Arbitrator could not have decided the issue on the basis of the maxim *res ipsa loquitur*.

59. The learned District Judge had also held that, there is nothing on record placed by the claimant that, any NOC from the Fire Department was obtained before handing over the subject property to the respondent herein.

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The Court not agreeing with the findings of the Arbitrator held that the claimant has the onus to establish that before handing over the godown, it had installed all the fire safety equipment/devices.

60. The learned District Judge with regard to the finding of the Arbitrator, held that there is no proof or material to show that the accident was due to the negligence of the respondent. It also held that, once the claimant that is the appellant, has failed to discharge the initial burden to prove the aforesaid issue and also has not proved on record that, it had installed all fire safety measures in the godown in question before handing over the possession or that any agency has submitted the report qua the cause of fire in the godown in question, it would be wholly unjustified to arrive at the conclusion that, it was due to the negligence on the part of the respondent herein, or that the respondent herein is liable to pay damages for the reconstruction and repair of the demised godown to the appellant due to fire incident. The learned District Judge also held that the law relating to the applicability of the doctrine of *res ipsa loquitur* does not apply to the facts of the present case and the respondent herein cannot be held responsible for the fire in the godown. It was also held that the findings given by the learned Arbitrator on *res ipsa loquitur* suffer from patent illegality.

61. Having noted the above, we find that the conclusion of the learned District Judge that the invocation of the doctrine of *res ipsa loquitur* by the learned Arbitrator was not necessary, as in the facts, the onus to prove that it was not negligent was on the appellant, is the contrary to the judgment of the Supreme Court in ***Shyam Sunder (supra)***. This we also say for the reason

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that there is some basis for the learned Arbitrator to conclude that in the facts it is apparent that the onus to prove was not on the appellant but on the respondent. If that be so, it is erroneous for the learned District Judge to rely upon Sections 101 and 3 of the Evidence Act, 1872 to arrive at the conclusion that the Arbitrator could not have decided the issue on the basis of *res ipsa loquitur*.

62. The learned District Judge was exercising the jurisdiction not as a regular Appellate Court but under Section 34 of the Act of 1996 and unless the conclusion drawn by the learned Arbitrator was contrary to public policy or was patently illegal, the learned District Judge could not have interfered with the award. It is trite law that in a petition under Section 34 of the Act, even if the Court finds that two views are plausible, it shall not substitute the view taken by the Arbitrator with its own view, unless the former is patently illegal or in conflict with the public policy of India. Merely by saying that the conclusion of the Arbitrator is patently illegal, the conclusion cannot be construed to be illegal, that too, without proper findings. It is not understood as to how the learned District Judge concluded that the appellant had failed to prove that it had installed all necessary safety measures, when it has come on record that M/s Pantaloon India Ltd. had asked for NOC of the Fire Department, which communication was denied by the respondent. Even otherwise, it was not the case of the respondent before the Arbitrator that the appellant had not provided/installed necessary safety measures, or that despite its requests, the same were not provided. In the absence of any such case put forth by the respondent, the learned District Judge could not have arrived at the conclusion he did.

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63. The learned District Judge has relied upon ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd. in CA no. 5628/2021 decided on 09.09.2021***, wherein the Supreme Court has held as under:-

> *"29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression 'patent illegality'. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression 'patent illegality'. What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award The permissible grounds for interference with a domestic award under Section 34 (2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived al by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality."*

64. We may refer to the recent judgment of the Supreme Court in ***Gayatri***

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Balasamy v Ms. ISG Novasoft Technologies Limited, SLP(C) Nos. 15336-15337/2021 wherein it was held that Section 34(2)(b) of the Act stipulates that an arbitral award may be set aside only when the subject matter of the dispute cannot be settled by arbitration per the applicable law or if the arbitral award conflicts with the public policy of India. Explanation 1 to Section 34(2) clarifies that an award can conflict with public policy of India **only** if (i) the award is induced or affected by fraud, corruption or is in violation of Section 75 or Section 81 of the Act; (ii) when it is in contravention with the fundamental policy of Indian law; or (iii) when it conflicts with the most basic notions of morality or justice. Explanation 2 mandates that no review on the merits shall be undertaken when determining a contravention of the fundamental policy of Indian law.

65. We must state that there is no contravention of law by the learned Arbitrator as stipulated under Section 34(2)(b) of the Act. Even any error committed by the Arbitrator as erroneous application of law also cannot be categorised as patent illegality. There is nothing on record to show that the learned Arbitrator has contravened any law linked to the public policy or public interest. Hence, the conclusion drawn by the learned Arbitrator that the award is patently illegal, cannot be sustained.

66. Suffice to state, the learned District Judge has misapplied the ratio of the judgment in ***Delhi Airport Metro Express Pvt. Ltd. (supra)*** in the facts of this case.

67. Further, it is not a case where reasons have not been given by the learned Arbitrator. The plea that a specific issue was framed but no evidence

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was produced by the appellant would not have any bearing, insofar as the conclusion drawn by the learned Arbitrator is concerned. The same was keeping in view the law laid down by the Supreme Court in ***Shyam Sunder (supra)***, which has been reiterated by the Supreme Court in aforesaid two judgments in ***Mcdowell Limited (supra)*** and ***Sanjay Gupta & Others (supra)***.

68. In view of our above discussion, the conclusion drawn by the learned District Judge in his order dated 22.02.2024 is clearly erroneous and the same is liable to be set aside. We order so and dispose of this appeal by restoring the award dated 17.09.2018 passed by the learned Arbitrator, by holding that the Section 34 petition filed by the respondent is without any merit and is dismissed. The pending application, if any, is disposed of as having become infructuous.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

MARCH 10, 2026/sr/rk

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