

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)

CJ Court

Case : Arb P No. 19/2025

Date of Pronouncement: 28.11.2025

Uploaded on: 01.12.2025

Mohammad Muzaffar Sofi

..... Appellant/Petitioner(s)

Through: Mr. Sajad Ahmad Mir, Advocate
Mr. Haaris Khan, Advocate

Vs

Fayaz Ahmad Sofi and others

.....Respondent(s)

Through: Mr. Sameer ul Hamid, Advocate

Coram: HON'BLE THE CHIEF JUSTICE

ORDER

(ORAL)

1. The present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator.
2. The petitioner is the partner and the Managing Director of M/s S.M. Traders, deals with merchandise business. The petitioner and respondents had entered into partnership business, by virtue of Partnership Deed executed on 18.04.1991, dealing with general items under the name and style of M/S S.M. Traders with its principal place of business at Kokerbazar, Srinagar. It had been agreed between the partners that whatever properties will be acquired after the partnership those shall be divided equally between the partners as per their share ratio. After execution of the partnership deed, the partners jointly pursued the affairs of business, but while closely looking into the partnership deed and its legal consequences and repercussions, the petitioner observed that disputes had arisen wherein some of the partners were claiming exclusive ownership of the assets purchased in the name of the firm. Further, certain

fraudulent and mischievous notarized partnership deeds were allegedly executed by some partners behind the back of the petitioner. There has also been mismanagement of profits/money also, which, although brought to the notice of partners by the petitioner, but nothing has been done till date.

3. The petitioner served communication/notice dated 30.01.2025 upon the respondents regarding appointment of arbitrator by the partners, however, the same was not replied to. The petitioner also objected to the respondents' contention regarding unilateral appointment of an arbitrator in light of the provisions of the Arbitration and Conciliation Act, which has not been replied by the respondents. The religious clergy, Mr. Mufti Nasrul Islam, was asked to give an opinion, though not by all the partners, and ultimately, on October 24, he stated that the partners should take a special oath for clearing the doubts and thereafter divide the properties as per Muslim Personal Law, which though is not a decision or award at all, of which he had no authorization as the same was withdrawn by the party before October 2024. The said award has been stayed by the court of Additional District Judge, Srinagar vide order dated 08.05.2025.

3. The petitioner, by invoking Section 9 of the Arbitration and Conciliation Act, filed an application before the court of Additional District and Sessions Judge, Srinagar, who, vide order dated 05.02.2025 directed the respondents not to siphon any money from the partnership accounts. Despite this, the respondents siphoned funds even after the passing of the order, for which a contempt application has been filed before the same court. The petitioner had initially referred the matter to the respondents for mutual settlement and negotiation, but they failed to resolve the matter mutually, which constrained the petitioner to approach this Court.

5. Pursuant to the notice issued by this Court, the respondents had caused appearance and filed their response contending, *inter alia*, that this petition is not maintainable either in law or on facts, as the parties admittedly have already referred the disputes to the arbitrator, namely, Mr. Mufti Nasir Ul Islam and the petitioner has challenged the award passed by the arbitrator in the court of Additional District Judge, Srinagar, which is *sub judice*. The petition filed by the petitioner under Sections 5 and 8 of the Arbitration & Conciliation Act before

the court of City Judge, Srinagar has been dismissed vide order dated 05.05.2025, which fact has been suppressed by the petitioner. The respondents further contended that there is no subsisting arbitration agreement between the parties, therefore, the petition is not maintainable.

6. Heard learned counsel for the parties.

7. The existence of the arbitration clause, as aforesaid, and its invocation by the petitioner vide notice dated 30.01.2025 is not disputed.

8. Thus, having argued the matter at some length and in the given circumstances, learned counsel for the respondents, as always, fairly submits that let an arbitrator be appointed. But since the claim that is sought to be made by the petitioner is vehemently disputed/denied, it is submitted that respondents be granted liberty to raise all possible pleas/objections before the arbitral tribunal/arbitrator in this regard.

9. In the given facts and circumstances, coupled with statement made at the Bar by learned counsel for the respondents, the petition is allowed. Accordingly, with consent of learned counsel for the parties, Mr. M.Y.Akhood, Retired District & Sessions Judge (Mobile No. 7006769456) is appointed as the sole arbitrator. Who shall proceed with the matter in accordance with the provisions of the Act. And to make an award within the time provided in the Act itself after charging the prescribed fee along with incidental expenses to be shared by the parties.

10. Registry to send a copy of this order to the learned arbitrator.

(ARUN PALLI)
CHIEF JUSTICE

Jammu :
28.11.2025
Pawan Chopra/Secy