

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Case No: AP No.12/2019
CM No.5846/2021,
CM No.7286/2025,
CM No. 588/2021**

*Reserved on: 13.02.2026
Pronounced on: 27.02.2026
Uploaded on: 27.02.2026*

*Whether the operative part or full
Judgment is pronounced : **Full***

Rakesh Kumar

...Petitioner(s)/Appellant(s)

Through: Mr. Varun Raina, Advocate.

v/s

Gulshan Kumar and others

.... Respondent(s)

Through: Mr. Karman Singh Johal, Advocate.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. This petition has been filed under Section 11(6) of the J&K Arbitration and Conciliation Act, 1997 (hereinafter referred to as "the Act") seeking appointment of an independent Arbitrator for adjudication of the disputes that have arisen between the parties.
2. The petitioner contends that a partnership was constituted between the parties to carry on business under the name and style of M/s Sachdeva

Garments, with its principal place of business at Jammu. This partnership was governed by a Partnership Deed dated 01.04.1996.

3. According to the petitioner, disputes surfaced in 2017 when the respondents failed to remit the petitioner's share of profits and omitted his name from the firm's balance sheets and income tax returns. It is alleged that respondent No. 3, who was in exclusive control of the firm's financial management and books of account, denied the petitioner's requests for inspection.
4. Despite several demands for an accounting and payment of dues, the respondents remained non-compliant. Consequently, the petitioner invoked the arbitration clause contained in the Partnership Deed vide notice dated 26.08.2017, calling upon the respondents to refer the disputes to an independent Arbitrator.
5. It is further submitted that following receipt of the aforementioned notice, the respondent No. 3 instituted a civil suit before the Court of the learned Municipal Magistrate, Jammu. In response, the petitioner moved an application under Section 8 of the Act, praying for the referral of the dispute to arbitration in light of the arbitration agreement. By way of an order dated 04.01.2018, the learned Municipal Magistrate allowed the petitioner's application and accordingly dismissed the suit. This order was subsequently assailed by respondent No. 3 by way of a civil appeal.
6. The grievance of the petitioner arises from the fact that, notwithstanding the existence of a valid arbitration clause in the Partnership Deed dated 01.04.1996 and the formal invocation thereof, no independent Arbitrator has been appointed till date to adjudicate

upon the disputes between the parties. The respondents have failed to act in accordance with the agreed procedure for appointment of the Arbitrator, thereby frustrating the mechanism contemplated under the arbitration clause.

7. The petitioner has tentatively quantified his claim at Rs. 14,78,051.18, representing his capital investment as of 31.01.2019, inclusive of interest at the rate of 18% per annum. Furthermore, the petitioner asserts his entitlement to a proportionate share in the firm's assets, including the shop premises and any investments allegedly made by respondent No. 3 using partnership funds.
8. The respondent No. 3 has filed objections, contending that the partnership business was dissolved by mutual consent on 31.03.2010. It is further asserted that upon such dissolution, the arbitration clause contained in the unregistered partnership deed dated 01.04.1996 stood extinguished and is no longer enforceable for any statutory purpose, including the appointment of an Arbitrator.
9. Regarding the shop premises, the respondent No. 3 maintains that he had independently secured a tenancy at Raj Tilak Road on 01.11.1978. A formal Rent Deed was executed on 29.11.1985 between the respondent No. 3 and the landlady, Smt. Shanti Devi, which was duly registered before the Sub-Registrar, Jammu. It is averred that respondent No. 3 has, since the inception of said tenancy, carried on business under the name and style of M/s Amar Soap Works.
10. According to respondent No. 3, in the year 1983, at the insistence of his late father, he included the petitioner in the said business as a

partner, allegedly without any capital contribution from the petitioner and without execution of any written agreement. It is further stated that on 10.12.1992, the respondents Nos. 1 and 2 were also inducted into the business as partners by respondent No. 3, again without any capital contribution, and that the profits were to be shared equally amongst all four partners.

11. Subsequently, the firm's business was changed to readymade garments. Consequent to this change in the nature of business, a fresh partnership deed was executed, whereby the firm was reconstituted under the name and style of M/s Sachdeva Garments. In view of his role in the active management of the firm's day-to-day operations, the respondent No. 3 was entitled to a monthly working allowance of Rs. 3,000/-, which was subject to periodic upward revisions as per the agreement between the partners.

12. The respondent No. 3 has further averred that he was also a partner, along with the petitioner and other brothers, in the firms-*M/s Bhagat Soap and General Traders* and *M/s Sachdeva Brothers*. In the year 1996, it was settled amongst the brothers that respondent No. 3 would withdraw from the aforesaid two firms, namely, *M/s Bhagat Soap and General Traders* and *M/s Sachdeva Brothers*, provided that the petitioner and respondents No. 1 and 2 also withdraw from *M/s Sachdeva Garments*, thereby allowing respondent No. 3 to operate the said firm as its sole proprietor. It is contended that respondent No. 3 fulfilled his part of the arrangement by withdrawing from the firms *M/s Bhagat Soap and General Traders* and *M/s Sachdeva Brothers*, and that the petitioner and respondents No. 1 and 2 also withdrew

their accumulated capital from *M/s Sachdeva Garments*, leaving behind only a meagre balance amount in their favour.

13.It is further stated that respondent No. 3 was managing the business and had engaged the petitioner, namely, Rakesh Kumar, as an Accountant in the year 1985, who continued in that capacity till 31.03.2010, i.e., the date on which the partnership business was closed by mutual consent. According to respondent No. 3, the petitioner was responsible for handling the financial affairs and maintaining the books of accounts of the firm, and all relevant documents substantiating this position, were in the custody of the petitioner. It is also averred that final balance sheets were prepared and final income tax returns were filed, and that the concerned authorities, including the Commercial Taxes Department and the Income Tax Department, were duly informed about the closure of the business. It is further averred that after the alleged closure of the business of *M/s Sachdeva Garments* on 31.03.2010, respondent No. 3 commenced his independent proprietorship concern under the name and style of *M/s Vijay Enterprises* in the same shop premises. The said concern was engaged in the sale of non-taxable items such as ladies' suits and dress material. The goods were stated to have been procured from Delhi as well as the local market, and sales were conducted from the very premises earlier utilized for the business of *M/s Sachdeva Garments*. It is stated that *M/s Vijay Enterprises* was closed on 31.03.2014, thereafter respondent No. 3 started another proprietorship concern under the name and style of *M/s Vijay Dress Material* in the same premises.

14.The respondent No. 3 has admitted the filing of the civil suit before the learned Municipal Magistrate, Jammu, and its subsequent dismissal. However, it is contended that the real dispute between the parties is not referable to any subsisting partnership but arises out of alleged attempts by the petitioner, supported by the other respondents, to lay claim over the share of respondent No. 3 in the joint family assets and his individual properties by exerting pressure upon him. It is also contended that the respondent No.3 had earlier filed his income tax returns in Form ITR-3, which is applicable to individuals having income from partnership business. However, after 31.03.2010, the respondent No.3 allegedly ceased to file returns in Form ITR-3 and instead filed returns in Form Sugam (ITR-4S), thereby indicating that he had no income from any partnership firm or joint venture after the said date.

15.Rejoinder has been filed by the petitioner, wherein it is asserted that the partnership business conducted pursuant to the partnership deed dated 01.04.1996, which contains the arbitration clause, has never been dissolved. The petitioner has specifically denied the contention of respondent No. 3 that the firm was closed with the mutual consent of all partners on 31.03.2010, submitting that no documentary evidence has been placed on record to substantiate such a plea. The petitioner has further denied that the accounts were settled or that the partners were paid their respective dues, there being no documentary proof in support thereof. The petitioner has contended that in the event an Arbitrator is appointed, all the parties would have adequate opportunity to raise their respective contentions and lead evidence

before the learned Arbitrator, who would then adjudicate upon the disputes and render findings on merits.

16.It is further stated that the partners had reposed complete trust and confidence in respondent No. 3, namely, Sh. Vijay Kumar, who was entrusted with the management of the partnership business. However, for the last eight to nine years, he allegedly stopped filing the balance sheets and income tax returns with the concerned authorities in respect of the partnership firm. The petitioner claims to have learnt of this fact only upon receiving information from the Income Tax Department in response to an application filed under the Right to Information Act. The petitioner has reiterated that respondent No. 3 was exclusively handling the financial affairs and management of the partnership business and was maintaining the books of account. Despite repeated requests, he allegedly failed to furnish the details of accounts or produce the books of account for inspection, and also refused to pay the petitioner his share of profits. Consequently, the petitioner approached the Income Tax Department seeking copies of the income tax returns filed by respondent No. 3 on behalf of the partnership firm. Upon receiving the reply, the petitioner claims to have discovered that income tax returns had not been filed since the year 2010 and that proper balance sheets had also not been submitted before the Sales Tax Department, thereby giving rise to serious suspicion regarding the conduct of respondent No. 3.

17.Mr. Varun Raina, learned counsel for the petitioner, submits that the question as to whether the partnership stood dissolved in the year 2010 constitutes a disputed question of fact, which cannot be

adjudicated in the present proceedings and is required to be determined on the basis of evidence by the competent forum. It is argued that such an issue squarely falls within the exclusive domain of the Arbitral Tribunal and lies beyond the limited scope of examination by this Court while exercising jurisdiction under Section 11(6) of the Arbitration and Conciliation Act. He further contends that respondent No. 3 was managing the business and solely responsible for the firm's financial compliance and maintenance of accounts. Despite repeated demands seeking inspection of the books of account and balance sheets, respondent No. 3 withheld and suppressed the relevant records. Consequently, the petitioner was constrained to invoke the provisions of the Right to Information Act to procure the necessary documents from the Income Tax Department. It was only upon receipt of such statutory disclosures that the petitioner came to know that respondent No. 3 had unilaterally discontinued filing the firm's income tax returns after the year 2010, thereby keeping the petitioner completely uninformed about the true financial and operational status of the firm.

18. *Per contra*, Mr. Karman Singh Johal, learned counsel appearing for respondent No. 3 has submitted that the disputes, if any, raised by the petitioner are ex facie barred by limitation. It is contended that the petitioner's own Income Tax Returns (ITRs) for the Assessment Years (AY) 2008-09 and 2009-10 demonstrate that he was deriving regular income from M/s Sachdeva Garments. During this period, the petitioner consistently filed Form ITR-3, which is specifically prescribed for individuals having 'Income from a Partnership Firm.' Conversely, for the AY 2011-12, 2013-14, and 2014-15, the petitioner

transitioned to filing Form Sugam (ITR-4S). Learned counsel argues that this change in filing status constitutes a clear admission that the petitioner was no longer a partner in any firm and not receiving a share of profits. The shift from ITR-3 to ITR-4S serves as contemporaneous evidence that the partnership business, as far as the petitioner was concerned, had ceased to exist after 2010. It is thus argued that this conduct unequivocally proves that the partnership firm stood dissolved with effect from 31.03.2010 and that the present petition is not maintainable.

19. Heard learned counsel appearing for the parties and perused the record.

20. It is worthwhile to mention here that respondents 1 and 2 have supported the case of the petitioner and have expressed no objection to the appointment of an Arbitrator. The same has already been duly recorded by this Court in its order dated 03.02.2021.

21. It is pertinent to mention here that the respondent No. 3 has not disputed the execution or existence of the Partnership Deed dated 01.04.1996. On the contrary, by way of a categorical admission in paragraph No. 1 of the Preliminary Objections, the respondent No.3 has conceded to the existence of the said agreement but it is stated that the same is unregistered. Consequently, the existence of the arbitration clause, which is the primary subject of inquiry in the present proceedings, stands admitted and requires no further proof at this stage.

22. Respondent No. 3 has questioned the maintainability of the present petition on two principal grounds. Firstly, it is contended that the

claims sought to be raised by the petitioner are ex facie barred by the law of limitation. Secondly, it is urged that no arbitrable dispute presently subsists between the parties. This objection is founded upon the assertion that the partnership stood dissolved by mutual consent with effect from 31.03.2010, and that, upon such dissolution, all rights and obligations arising out of the Partnership Deed dated 01.04.1996 stood settled and extinguished

23.Regarding the contention of respondent No. 3 that the claims are barred by limitation, based on the petition being filed in February 2019, it is noted that the petitioner's case rests on a delayed discovery of facts. It is pleaded in the petition as well as in the rejoinder that respondent No. 3 had discontinued the filing of income tax returns of M/s Sachdeva Garments, which constrained the petitioner to approach the Income Tax Department for clarification. The petitioner asserts that he became aware of the said default only upon receipt of communication dated 29.07.2016 from the Income Tax Department, informing him that the firm had not filed returns since the Assessment Year 2010-2011.

24.In view of the rival and conflicting stands taken by the parties, a detailed adjudication on the question of limitation would travel beyond the limited scope of the present proceedings under Section 11(6) of the Act. The issue of limitation being a mixed question of law and fact necessarily warrants a comprehensive examination of pleadings and evidence, which can appropriately be undertaken only by the learned Arbitrator. Therefore, this issue is left open for the learned Arbitrator to decide after allowing the parties to present their

respective evidence and arguments during the arbitral proceedings. This view is fortified by the judgment of the Hon'ble Supreme Court of India in **SBI General Insurance Co. Ltd. v. Krish Spinning**, reported in **2024 INSC 532** wherein, in paragraph 114, it has been held as under:-

“114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra).

(Emphasis added)

25.The respondent No. 3 further contends that the partnership stood dissolved as of 31.03.2010, pointing to the petitioner's filing of Form Sugam (ITR-4S) and the alleged receipt of a final share as evidence of the firm's termination. The petitioner, however, categorically denies these assertions. It is his specific case that respondent No. 3 exercised exclusive control over the firm's management, accounts, and tax filings. The petitioner maintains that no final settlement was ever reached and that no valid dissolution occurred. Consequently, the factum of dissolution and the settlement of accounts are heavily controverted questions of fact. Such disputes necessitate a full appreciation of evidence and cannot be conclusively adjudicated in a summary proceeding under Section 11(6) of the Act.

26.In view of the foregoing discussion, this Court is satisfied that a valid arbitration agreement exists between the parties and that disputes have

arisen thereunder, which are required to be adjudicated in accordance with the agreed mechanism contained in the partnership deed.

27.The petitioner has admittedly served notice upon respondent No. 3 invoking the arbitration clause contained in the partnership deed. In view of the existence of a valid arbitration agreement and the disputes having arisen between the parties, I am of the considered view that the present application deserves to be allowed. Accordingly, the application is allowed. Shri Sobha Ram, Gandhi, District and Sessions Judge (Retd.) R/O Village Purkhoo, P.O.Domana, Tehsil and Distrit Jammu is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties arising out of the agreement in question. The learned Sole Arbitrator shall enter upon the reference in accordance with law and shall be entitled to fees as per the applicable rules.

28.It is clarified that any observations made herein are confined solely to the adjudication of the present application under Section 11 of the Act and shall not be construed as an expression on the merits of the claims or counter-claims of the parties, which shall be considered independently by the learned Arbitrator.

29.The Registry shall send a copy of this order to the learned Arbitrator forthwith.

30.The petition stands disposed of in the above terms.

(Rajnish Oswal)
Judge

Jammu
27.02.2026
Madan Verma-Secy

Whether order is speaking? Yes.
Whether order is reportable? No.