

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.53 OF 2015

Sachendra Sadashiv Shetty and others : Applicants.
Versus
Ratnakar Annaya Shetty and anr. : Respondents.

Mr. Anilkumar K Patil for the Applicants.

CORAM : R. M. SAVANT, J.
DATE : 02nd March 2015

P.C.

1 The revisionary jurisdiction of this Court is invoked against the order dated 8/11/2014 passed by the learned Joint Civil Judge, Junior Division, Nashik by which order the Application (Exhibit 16) filed by the Defendant Nos.1 to 3 questioning the maintainability of the suit on the ground that the firm in question is not registered as required by Section 69 of the Partnership Act and that the partnership deed contains an arbitration clause being Clause No.19 came to be rejected.

2 In so far as the objection on the ground of Section 69 is concerned, having regard to the frame of the suit where the Plaintiff who is one of the partners has filed the suit in question seeking an injunction against the Defendants i.e. the other partners and third parties from preventing the Plaintiff from participating in the business of the partnership and for getting his share in the profits.

3 The Trial Court was right in coming to the conclusion that having regard to the said reliefs, the same would not fall within the ambit of Section 69 of the Partnership Act. However, in so far as the maintainability of the suit in question on the ground that there being an arbitration clause is concerned, obviously the maintainability of the suit cannot be questioned on the said ground, as in the event if there is an arbitration clause it is open for the parties to apply for the matter being referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996, but the said fact does not impinge upon the maintainability of the suit. In the instant case, trial Court has not expressed any opinion in so far as the said objection is concerned. Be that as it may it would be open for the Defendants to file an Application under Section 8 of the Arbitration and Conciliation Act, 1996 for the dispute being referred to arbitration. If any such application is filed, the same would be considered by the Trial Court on its own merits and in accordance with law. The contentions of the parties on the said aspect are explicitly kept open for being urged before the Trial Court. With the aforesaid observations, the above Civil Revision Application is disposed of.

[R.M.SAVANT, J]