

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

**CIVIL MISCELLANEOUS APPEAL NO.111 OF 2016
AND
CIVIL REVISION PETITION NO.953 OF 2016**

C.M.A.No.111 of 2016

Between:

Syed Irfan Sulaiman. .. Appellant

and

M/s. New Amma Hospitals,
Represented by its authorized signatory and Managing Partner,
Sri Mohd. Faiaz Khan Shiridi Sai Nagar, Karmanghat,
Saroornagar, Ranga Reddy District. .. Respondent

C.R.P.No.953 of 2016

Between:

Syed Irfan Sulaiman. .. Petitioner

and

M/s. New Amma Hospitals,
Represented by its authorized signatory and Managing Partner,
Sri Mohd. Faiaz Khan Shiridi Sai Nagar, Karmanghat,
Saroornagar, Ranga Reddy District. .. Respondent

DATE OF THE ORDER PRONOUNCED: 15.11.2016

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

ANIS, J

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

+CIVIL MISCELLANEOUS APPEAL NO.111 OF 2016
AND
CIVIL REVISION PETITION NO.953 OF 2016

% DATED 15th NOVEMBER, 2016

C.M.A.No.111 of 2016

Syed Irfan Sulaiman. .. Appellant

Vs.

\$ M/s. New Amma Hospitals,
Represented by its authorized signatory and Managing Partner,
Sri Mohd. Faiaz Khan Shiridi Sai Nagar, Karmanghat,
Saroornagar, Ranga Reddy District. .. Respondent

C.R.P.No.953 of 2016

Syed Irfan Sulaiman. .. Petitioner

Vs.

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Represented by its authorized signatory and Managing Partner,
Sri Mohd. Faiaz Khan Shiridi Sai Nagar, Karmanghat,
Saroornagar, Ranga Reddy District. .. Respondent

<Gist:

>Head Note:

! Counsel for the Appellant : Sri G. Kalyan Chakravarthy

^Counsel for the Respondent : Sri S.R. Sanjeev Kumar

? CASES REFERRED:

1. 2015 (1) ALD 46 (DB)
2. 2011 (3) CHN 680
3. (2006) 7 SCC 275
4. AIR 2008 SC 1016
5. (2004) 3 SCC 155
6. (2011) 14 SCC 66
7. (2010) 1 SCC 562
8. (2009) 10 SCC 103
9. (2007) 3 SCC 686

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

**CIVIL MISCELLANEOUS APPEAL NO.111 OF 2016
AND
CIVIL REVISION PETITION NO.953 OF 2016**

C O M M O N J U D G E M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

O.S.No.1142 of 2015 on the file of the learned II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, was filed by M/s. New Amma Hospitals, a partnership firm, for a perpetual injunction restraining Syed Irfan Sulaiman, the defendant, from entering into the suit schedule property and to restrain him from interfering with the day to day affairs and management of the hospital. The suit schedule property is a building comprising ground plus four upper floors situated at Plot No.6, Survey No.59 part, Hastinapuram Central, Shirdi Sai Nagar, Karmanghat Village, Saroornagar Mandal, Ranga Reddy District, wherein the hospital is housed and operating.

Syed Irfan Sulaiman, the defendant in the suit, filed I.A.No.796 of 2015 therein under Section 8 of the Arbitration and Conciliation Act, 1996 (for brevity, 'the Act of 1996') seeking reference of the dispute to arbitration in terms of the arbitration clause contained in the partnership deed. He also filed I.A.No.797 of 2015 in the suit under Order 7 Rule 11 CPC seeking rejection of the plaint. By separate orders dated 07.12.2015, the trial Court dismissed both I.As. Aggrieved thereby, he is before this Court. C.M.A.No.111 of 2016, an appeal under Section 37 of the Act of 1996, arises out of the order passed in I.A.No.796 of 2015 in O.S.No.1142 of 2015, while

C.R.P.No.953 of 2016, under Article 227 of the Constitution, pertains to the order passed in I.A.No.797 of 2015 in O.S.No.1142 of 2015.

Heard Sri G.Kalyan Chakravarthy, learned counsel for the appellant/petitioner, the defendant in the suit, and Sri S.R.Sanjeev Kumar, learned counsel for the respondent in both cases, the plaintiff in the suit.

Parties shall be referred to hereinafter as arrayed in the suit.

The plaint averments in O.S.No.1142 of 2015 read as under:
The plaintiff is a registered partnership firm bearing Registration No.680/2015 on the file of the Registrar of Firms, Ranga Reddy East. The original registered partnership deed is dated 26.02.2015. The plaintiff firm established a hospital with the sole intention of serving needy patients at reasonable charges. However, as financial difficulties were faced in the running of the hospital, the partners of the plaintiff firm agreed to induct a new partner, who would pay a sum of Rs.1,50,00,000/- to help them overcome problems in the operation of the hospital. The defendant was acquainted with the partners of the plaintiff firm and came forward with the proposal that he would invest monies so as to resolve the problems faced by the hospital. After discussions and negotiations, the partners of the plaintiff firm and the defendant arrived at a proposal in principle, whereby the defendant was to be inducted as a partner with a 30% share. Upon this understanding, retirement-cum-reconstitution of partnership deed dated 13.04.2015 was reduced into writing, wherein the partners of the plaintiff firm and the defendant affixed their signatures. The defendant agreed to pay a sum of Rs.1,50,00,000/- into the account of the hospital and thereafter, the deed was to be submitted before the Registrar of Firms, Ranga Reddy East. While

so, the defendant took the deed of partnership along with him on the ground that it was required to be shown to the bank manager for drawal of the amount. The defendant promised to pay the cash by the evening but failed to turn up on the said date and on consecutive dates also. The plaintiff firm therefore alleged that the defendant did not fulfill his obligation as per his promise. The plaintiff firm further alleged that the original of this partnership deed, which was not registered, was in the custody of the defendant and with a malafide intention and without the consent of the partners of the plaintiff firm, he submitted it before the Registrar of Firms without their knowledge. The partners of the plaintiff firm lodged a complaint before the Registrar on 17.04.2015 requesting him not to register or entertain the said partnership deed. The plaintiff firm further asserted that in the light of the objections raised by the partners, the Registrar of Firms did not register the partnership deed dated 13.04.2015 and issued notice to all concerned. The defendant however failed to appear but started visiting the hospital along with anti-social elements and was creating a nuisance. In this regard, the plaintiff firm asserted that on 04.08.2015 the defendant came to the hospital and started to interfere with the management of the hospital by threatening the hospital staff, patients and the partners of the firm. The plaintiff firm stated that it lodged a complaint on 06.08.2015 with Meerpet Police Station, leading to registration of Crime No.542 of 2015. The defendant again trespassed into the premises of the hospital on 23.08.2015 with his henchmen. It was on the strength of these averments that the plaintiff firm sought a perpetual injunction.

In his affidavit filed in support of I.A.No.796 of 2015 in O.S.No.1142 of 2015, the defendant pointed out that the partners of

the plaintiff firm admitted execution of the partnership deed and their signatures therein, whereby he was inducted as a partner in the firm. He pointed out that the said agreement contained an arbitration clause and therefore, any dispute in relation to the said agreement would fall within the ambit of the arbitration clause. He asserted that the civil Court would have no jurisdiction in such a matter except for entertaining a petition under Section 9 of the Act of 1996. He pointed out that Section 8 of the Act of 1996 contemplated that where the jurisdiction of the civil Court is invoked and it is brought to the notice of the said Court that the parties have agreed to resort to arbitration for their dispute resolution, the civil Court should refer the matter to arbitration upon an appropriate petition being made, and accordingly prayed for such reference. Similar was his stand in the affidavit filed in support of I.A.No.797 of 2015 filed in the suit. He asserted therein that when there was an arbitration clause which required to be acted upon, the plaintiff firm could not invoke the jurisdiction of the civil Court for resolution of any dispute covered by such a clause. He further pointed out that as per the provisions of the Specific Relief Act, 1963, a suit for an injunction could not be maintained when an equally efficacious remedy was available to the plaintiff and prayed that the trial Court should dismiss the suit under Order 7 Rule 11 CPC as being barred by law.

The plaintiff firm contested the I.A.s stating that the defendant was not a partner of the firm as the deed was not registered by the Registrar of Firms, Ranga Reddy East, and therefore, the arbitration clause contained in the said deed could not be invoked. The plaintiff firm admitted the execution of the reconstitution deed whereby the defendant was inducted as a partner but asserted that it was subject

to the condition that he would pay a sum of Rs.1,50,00,000/- which he failed to do. The plaintiff firm therefore asserted that the defendant had no *locus* to invoke Section 8 of the Act of 1996 and the trial Court was fully empowered to entertain the suit.

Perusal of the order passed by the trial Court in I.A.No.796 of 2015 filed in the suit reflects that the trial Court was of the opinion that the plaintiff firm was not seeking adjudication of a dispute referable to the reconstitution deed, whereby it could be referred to arbitration. According to the trial Court, the issue raised by the plaintiff firm was with regard to the alleged fraud committed by the defendant in relation to payment of Rs.1,50,00,000/- and in trying to get the reconstitution deed registered behind the back of the partners of the plaintiff firm. The trial Court therefore concluded that the petition under Section 8 of the Act of 1996 was not maintainable and dismissed the I.A. Similar was the reasoning of the trial Court in the order passed in I.A.No.797 of 2015 in O.S.No.1142 of 2015 which was dismissed on the same date.

It is an admitted fact that the plaintiff firm was registered under the original partnership deed dated 26.02.2015 and was allotted Registration No.680/2015 by the Registrar of Firms, Ranga Reddy East. The plaint referred to the reconstitution deed, which is the basis for this litigation, as a document of the date 13.04.2015. The defendant, in turn, also referred to the same date in the context of this document in his affidavits filed in support of the I.A.s. The original of this document seems to have been submitted by the defendant to the Registrar of Firms, Ranga Reddy East, and appears to be still in his custody. That is perhaps the reason why the date was wrongly mentioned by both parties. However, a notarized copy of

the said document was thereafter placed on record by the defendant and demonstrates that it was executed on 09.04.2015. Anyhow, the discrepancy in the dates is of no real significance. Perusal of this document indicates that Mohammed Faiaz Khan, Mohammed Amjad Khan and Mandadi Srinivas Reddy, styling themselves as the 'continuing partners', along with Syed Irfan Sulaiman, the defendant, shown as the 'incoming partner', and Putta Venkata Venu Gopal, shown as the 'outgoing partner', were the executants thereof. All five of them affixed their signatures on each page of the document. The preamble of this document reads thus:

'And Whereas, the incoming partner **Syed Irfan Sulaiman**, on the request of the continues partnes the incoming partner expressed his desire to join this Partnership Business which was already formed in the name and style of M/s **NEW AMMA HOSPITAL**, in the Premises bearing Municipal No.8-7-91/15/H/6/NR and 8-7-91/15/H/6, situated at Hasthinapuram Central, Shirdisainagar, Karmanghat Village, Saroor Nagar Mandal, Ranga Reddy Dist. T.S. that the registered office of the Firm at 3-15-23, Bahar-2/12, Sahara States, Mansoorabad Village, L.B.Nagar Munhicipality, Saroor Nagar Mandal, Ranga Reddy Dist. T.S. that the said Firm is registered under section 59 of the Indian Partnership Act, 1932, vide Acknowledgement of Registration of Firm No.680 of 2015, at Ranga Reddy (East), dated: 02-03-2015, registered at Registrar of Firms R.R. Dist. East. That the Incoming Partner/Second Party agreed to join the business of Continuing Party on the following terms and conditions:-

And the outgoing partner **PUTTA VENKATA VENU GOPAL**, expressed his desire for retire from this Partnership Business on and from 09-04-2015, to which the said continuing partner agreed on the same and the said outgoing partner is retired on 09-04-2015.'

Significantly, the terms and conditions stipulated in the deed do not even mention the requirement of the defendant having to pay a sum of Rs.1,50,00,000/-, let alone that it was a condition precedent for his admission as a partner. Clause 14 relates to disputes and reads as under:

‘14. **DISPUTES:** All disputes and questions, interpretations arising out of the partnership between the partners during the continuance of the partnership or thereafter, may be referred to the arbitration of two arbitrators and in case of their disagreement to an umpire appointed by the said arbitrators, whose decisions shall be final, conclusive and binding upon the parties.’

The deed ended with the following recital:

‘IN WITNESS WHEREOF WE THE PARTNERS OF THIS DEED DO SOLEMNLY DECLARE THE TERMS AND CONDITIONS STIPULATED IN THIS DEED ARE AGREED BY US AND IN TOKEN OF OUR ACCEPTANCE, WE SIGN THIS DEED IN THE PRESENCE OF THE WITNESSES ATTESTING HEREUNDER’.

All the five executants of the deed affixed their signatures under the above recital in the presence of two witnesses, who also signed the document.

It is in the context of this reconstitution deed that both parties are now at logger heads. Having admitted the execution of this document, the plaintiff firm now asserts that as the defendant failed to pay the sum of Rs.1,50,00,000/-, he should be enjoined from interfering with the plaintiff firm and operation of the hospital.

Per contra, the defendant asserts that in the light of the dispute resolution mechanism contemplated under Clause 14 of the reconstitution deed, the plaintiff firm cannot maintain an independent suit and that recourse must be taken to arbitration proceedings in terms of the said clause.

Sri S.R.Sanjeev Kumar, learned counsel, would contend that the petition filed by the defendant was defective as per Section 8 of the Act of 1996 and warranted dismissal at the threshold. Section 8 is extracted hereunder:

‘8. Power to refer parties to arbitration where there is an arbitration agreement:--

- (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.
- (2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.
- (3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.’

It is the contention of the learned counsel that as the petition was filed by the defendant without the original reconstitution deed or a certified copy thereof, dismissal of the petition is inevitable in terms of Section 8(2) of the Act of 1996.

Per contra, Sri G.Kalyan Chakravarthy, learned counsel, would state that once the plaintiff firm admitted execution of the subject document, filing of the original or a certified copy thereof pales into insignificance and therefore, the petition filed under Section 8 of the Act of 1996 cannot be rejected on this technical ground. He would rely upon the Division Bench judgment of this Court in **ASIAN SECURITIES AND ESTATES LIMITED V/s. MS. NAUSHEEN RIYAZ AND OTHERS¹**. Therein, the Division Bench referred to the

¹ 2015 (1) ALD 46 (DB)

judgment of the Calcutta High Court in **RAJEEV MAHESHWARI V/s. INDU KOCHER**², which held to the effect that once the existence of the arbitration agreement stood admitted, having been referred to in the plaint itself, insistence upon filing of the original or a certified copy thereof in terms of Section 8(2) of the Act of 1996 would become redundant. On facts, the Division Bench found that the plaintiffs in that case had admitted execution of the document containing the arbitration clause and accordingly held that the requirement under Section 8(2) of the Act of 1996 was not imperative. The Division Bench opined that the issue would be with regard to existence of an arbitration clause and once the plaintiff admitted execution of the agreement containing such a clause, there would be no need for the defendant to file the original or a certified copy of such agreement along with the application under Section 8 of the Act of 1996.

Significant to note, in **RASHTRIYA ISPAT NIGAM LTD. AND ANOTHER V/s. VERMA TRANSPORT CO.**³, the question arose as to whether an application filed under Section 8 of the Act of 1996 would be maintainable if it is not accompanied by the original arbitration agreement or a duly certified copy thereof. The Supreme Court observed that once existence of such an agreement stood admitted and the dispute, which was the subject matter of the case, arose out of such an agreement and fell within the ambit of the arbitration clause contained therein, the judicial authority is statutorily mandated to refer the case to arbitration.

ATUL SINGH V/s. SUNIL KUMAR SINGH⁴ is distinguishable on facts from the aforestated two decisions as the arbitration agreement

² 2011 (3) CHN 680

³ (2006) 7 SCC 275

⁴ AIR 2008 SC 1016

itself was denied but no document was filed with the suit. In such a case, the requirement under Section 8(2) of the Act of 1996 was held to be mandatory.

In the present case, perusal of the plaint in O.S.No.1142 of 2015 demonstrates beyond doubt that execution of the reconstitution deed dated 09.04.2015, albeit wrongly shown with the date 13.04.2015, is admitted. Once execution of this document is admitted and it contains an arbitration clause, as set out in Clause 14, production of the original or a certified copy of the said reconstitution deed is wholly unnecessary. No doubt, the notarized copy of the reconstitution deed produced by the defendant would not qualify either as the original or as a certified copy. However, we need not labour on this aspect as Section 8(2) of the Act of 1996 would not come into play at all, as the plaintiff firm admitted execution of the reconstitution deed containing the arbitration clause.

The next contention is that this document is yet to be registered with the Registrar of Firms, Ranga Reddy East. According to the plaintiff firm this fact would, in itself, be sufficient to hold that the defendant is not a partner of the firm and therefore, he cannot take recourse to the arbitration clause contained therein.

Chapter VII of the Indian Partnership Act, 1932 (for brevity, 'the Act of 1932') deals with registration of firms. Section 58 therein provides for an application being made for registration of the firm. Such an application is to be sent by post or delivered to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated. Details, in a statement to be made in the prescribed form signed by all partners, accompanied by the prescribed fee are also to be submitted. Upon verification of such

application to ensure compliance with the provisions of Section 58, the Registrar is empowered under Section 59 to record the necessary entry in the Register of Firms and file the said statement. Recording of changes in and dissolution of a registered firm is provided for under Section 63. This provision reads to the effect that when a change occurs in the constitution of a registered firm, any incoming or outgoing partner may give notice to the Registrar of such change, specifying the date thereof, and the Registrar shall make a record of the notice in the entry relating to the said firm in the Register of Firms. Section 69 deals with the effect of non-registration of a firm. It is however significant to note that in the present case, the plaintiff firm was already registered on the strength of the original partnership dated 26.02.2015 and was allotted Registration No.680/2015 by the Registrar of Firms, Ranga Reddy East. This is therefore not a case of non-registration of the firm.

However, once a change is effected in the constitution of a registered firm, the necessary entry has to be made by the Registrar of Firms in terms of Section 63. In this regard, Section 69(1) would assume significance. It is an admitted fact that even as on date, the Registrar of Firms has not acted upon the application made by the defendant to include his name as a partner of the plaintiff firm in the Register of Firms. Consequently, as his name does not figure as a partner of the plaintiff firm in the Register of Firms, the defendant cannot maintain a suit against the said firm to enforce his rights arising from the reconstitution deed. To this limited extent, Section 69(1) would have application as the plaintiff firm still continues to be a registered firm, notwithstanding the failure to effect changes in its constitution by the Registrar of Firms as per the statutory mandate.

Pertinent to note, the reconstitution deed dated 09.04.2015 would not be registered but only the changes in the constitution effected thereunder would be taken note of by the Registrar in terms of Section 63 for making suitable entries in the Register of Firms.

The only right of a partner, who is not shown as a partner of the registered firm in the Register of Firms, would be under Section 69(3) to the extent that he can seek dissolution of the firm or rendition of accounts or realization of property of the dissolved firm. This right can also be enforced through arbitration proceedings. In ***FIRM ASHOK TRADERS AND ANOTHER V/s. GURUMUKH DAS SALUJA AND OTHERS***⁵, while holding to this effect, the Supreme Court observed that under the scheme of the Act of 1996, an arbitration clause is separable from other clauses in a partnership deed and constitutes an agreement by itself.

As matters stand, the defendant, as he is not shown to be a partner of the registered plaintiff firm in the Register of Firms maintained by the Registrar of Firms, Ranga Reddy East, is barred from filing a suit to enforce his rights arising under the said contract. If he is now denied the opportunity of at least taking recourse to the arbitration clause contained in the said reconstitution deed, he would be practically left with no remedy in law to seek enforcement of his rights thereunder. Hypothetically, had the defendant paid any amount to be inducted as a partner of the firm and is now sought to be excluded, he would neither be in a position to file a suit for recovery of such sum and if the argument of Sri S.R.Sanjeev Kumar, learned counsel, is to be accepted, he cannot even take recourse to arbitration proceedings by virtue of Clause 14 of the reconstitution

⁵ (2004) 3 SCC 155

deed, as he is not recognized as a partner. However, as pointed out in the precedent cited above, the arbitration clause is an agreement in itself and would stand apart from the other clauses of the document in which it finds place.

Be it noted, Section 2(1)(b) of the Act of 1996 defines the term 'arbitration agreement' to mean an agreement referred in Section 7. Section 7 reads as under:

'7. Arbitration Agreement:--

- (1) In this part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
- (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (3) An arbitration agreement shall be in writing.
- (4) An arbitration agreement is in writing if it is contained in—
 - (a) a document signed by the parties;
 - (b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or
 - (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
- (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.'

Therefore, neither a specific form nor registration is mandated to give effect to an arbitration clause as long as it falls within the ambit of the aforestated statutory provision. That is the reason why arbitration clauses even in compulsorily registrable documents have

been given effect to and have been acted upon. (***SMS TEA ESTATES PRIVATE LIMITED V/s. CHANDMARI TEA COMPANY PRIVATE LIMITED⁶*** and ***GEO-GROUP COMMUNICATIONS INC. V/s. IOL BROADBAND LIMITED⁷***). There can therefore be no dispute as to the right of the defendant to take recourse to arbitration proceedings in terms of Clause 14 of the reconstitution deed.

The next issue for consideration is whether the suit claim is relatable to Clause 14, whereby arbitration can be sought for its resolution. In this regard, reference may be made to ***BRANCH MANAGER, MAGMA LEASING AND FINANCE LIMITED AND ANOTHER V/s. POTLURI MADHAVILATA AND ANOTHER⁸***, wherein the Supreme Court observed that if there exists an arbitration agreement but an action is brought to the Court by one party to such arbitration agreement against the other and the subject matter of the suit is the same as the subject matter of the arbitration agreement, Section 8 is a legislative command to the Court to refer the parties to arbitration. The Supreme Court held that once the conditions of Section 8 are fulfilled, no option is left to the Court and it must refer the parties to arbitration.

As to the ambit of the word 'dispute', reference may be made to ***AGRI GOLD EXIMS LTD. V/s. SRI LAKSHMI KNITS & WOVENS AND OTHERS⁹***, wherein the Supreme Court held that the term 'dispute' must be given its general meaning under the Act of 1996. Reference was made to P.Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition, wherein it was stated as under:

⁶ (2011) 14 SCC 66

⁷ (2010) 1 SCC 562

⁸ (2009) 10 SCC 103

⁹ (2007) 3 SCC 686

‘In the context of an arbitration the words ‘disputes’ and ‘differences’ should be given their ordinary meanings. Because one man could be said to be indisputably right and the other indisputably wrong, that did not necessarily mean that there had never been any dispute between them....’

In the present case, as already pointed out *supra*, the reconstitution deed dated 09.04.2015 did not even refer to the fact that the defendant had to pay a sum of Rs.1,50,00,000/-. It straightaway provided for his induction as a partner in the plaintiff firm with a share of 30%. In consequence of his being inducted as a partner, certain rights were created in his favour under the terms and conditions stipulated in the deed. The place of business in terms of this document is the suit schedule property in O.S.No.1142 of 2015. The defendant was given the right to open a bank account with the consent of the other partners, apart from participating in the profit/loss sharing. He was, in fact, given the second highest share of 30% after the 50% share of Mohammed Faiaz Khan. While these were the recitals of the reconstitution deed, the plaintiff firm seeks a perpetual injunction restraining the defendant from entering into the suit schedule property and interfering with the day to day affairs and management of the hospital. The suit prayer was thus in direct contrast to the rights created in favour of the defendant under the reconstitution deed. The dispute therefore fell squarely within the four corners of the said reconstitution deed. Justification for the suit prayer against the defendant was the plaintiff firm’s assertion that he had failed to pay the promised amount of Rs.1,50,00,000/-. However, that was not the core dispute in the suit but only the plaintiff firm’s justification. Unfortunately, the trial Court understood this in the wrong perspective and opined that the suit

dispute was about the alleged fraud in non-payment of this amount and presentation of the reconstitution deed before the Registrar of Firms. This understanding of the trial Court is wholly incorrect as the plaintiff firm, by way of the suit claim, wanted to negate the rights created in favour of the defendant under the reconstitution deed dated 09.04.2015 and therefore, the dispute was squarely covered by the reconstitution deed, attracting Clause 14 thereof which provided for dispute resolution through arbitration. The trial Court therefore ought not to have dismissed the petition filed by the defendant under Section 8 of the Act of 1996. The said petition was maintainable, notwithstanding the failure on the part of the defendant to produce the original/certified copy of the reconstitution deed containing the arbitration clause in as much as execution of the said agreement was admitted by the plaintiff firm. The factum of the defendant not having been entered as a partner of the plaintiff firm in the Register of Firms maintained by the Registrar of Firms only had the effect of attracting Section 69(1) of the Act of 1932 and did not have any impact upon the maintainability of the petition filed by him under Section 8 of the Act of 1996. The dispute which formed the subject matter of the suit related to enforcement or rather, prevention of enforcement of the rights created under the reconstitution deed dated 09.04.2015 and the excuse offered by the plaintiff firm for denying such enforcement did not by itself become a dispute in its own right.

The trial Court therefore ought to have accepted the petition filed under Section 8 of the Act of 1996 and referred the parties to arbitration. The order dated 07.12.2005 holding to the contrary in

I.A.No.796 of 2015 in O.S.No.1142 of 2015 is accordingly set aside and the trial Court is directed to take steps accordingly.

As this Court already found that the petition filed by the defendant under Section 8 of the Act of 1996 merited consideration and as the said provision mandates in no uncertain terms that the judicial authority concerned shall refer the parties to arbitration, as has been emphasized by the Supreme Court in **POTLURI MADHAVILATA**⁸, the trial Court erred in rejecting the petition filed by the defendant under Order 7 Rule 11 CPC. Once the suit was barred in terms of Section 8 of the Act of 1996, Order 7 Rule 11(d) CPC clearly applied and the trial Court was statutorily barred from proceeding with the said suit. The understanding of the trial Court that this exercise should be undertaken only on the strength of the plaint averments is shortsighted. No doubt, for the purpose of Order 7 Rule 11(a) CPC, the trial Court would look only into the plaint averments to determine as to whether a cause of action has been established. The same approach may not be applicable when Order 7 Rule 11(d) CPC is pressed into service as it would be for the defendant to demonstrate before the Court as to how the suit is barred under any law. Any material placed before the trial Court by the defendant, including a petition under Section 8 of the Act of 1996, necessarily warranted examination by the trial Court.

In that view of the matter, the trial Court erred in rejecting the petition filed by the defendant under Order 7 Rule 11 CPC. Once the right of the defendant to take recourse to Section 8 of the Act of 1996 is upheld, law mandates that the judicial authority, before which a proceeding has been brought by one of the parties to the arbitration agreement, must necessarily non-suit such party and refer the case

to arbitration. Therefore, the order passed by the trial Court in I.A.No.797 of 2015 in O.S.No.1142 of 2015 is also set aside. The trial Court shall take steps accordingly.

C.M.A.No.111 of 2016 and C.R.P.No.953 of 2016 are allowed. In the circumstances, there shall be no order as to costs.

SANJAY KUMAR, J

ANIS, J

15th NOVEMBER, 2016

**Note: L.R. copy to be marked
B/o Svv**

