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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ARB.P. 577/2015**

DELHI PRINTERS & ANR ..... Petitioners
Through: Mr. Deepak Agarwal, Advocate.

versus

RAJ NARAYAN ..... Respondent
Through: Mr. Vivek Sharma, Advocate.

CORAM: JUSTICE S.MURALIDHAR

<u>O R D E R</u>
% **25.10.2016**

1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (Act) filed by the Petitioners against the Respondent seeking the appointment of an Arbitrator to adjudicate the disputes between the parties pursuant to the arbitration clause in the partnership deed dated 22nd January 1997 to which the Petitioners and the Respondent are parties.

2. Two clauses of the said partnership deed relevant for the purpose of the present petition read as under:

> "6. That the share of the partners in the profits, losses, assets (exclusive land measuring 106 sq.yds approx. Situated at 4648, Sedhumal Building, 21, Darya Ganj, New Delhi – 110 002) and the liabilities of the partnership business shall be as under:
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> | Shri Raj Narain | FIRST PARTY | 80% |
> | Shri Manish Gupta | SECOND PARTY | 20% |
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> 7. That the share of partners in land measuring 106 sq.yds approximately situated at 4648, Sedhumal Building, 21, Darya Ganj, New Delhi – 110 002 shall be in the following ratio:

Shri Raj Narain	FIRST PARTY	20%
Shri Manish Gupta	SECOND PARTY	80%

3. On 27th June 2014 a legal notice was issued on behalf of the Petitioner No. 2 to the Respondent in which *inter alia* it is pointed out that the partnership firm essentially possesses and owns property admeasuring 106 sq.yds situated at 4648, Sedhumal Building, 21 Darya Ganj, New Delhi and that the property is to be shared in the ratio of 80:20 between the Petitioner No. 2 and the Respondent in the event of dissolution of the partnership. In the legal notice it is noted that the Petitioner No. 2 gave the said property to one Mr. Vijay Jain in May 2003for storage of paper and Mr. Jain has been using the said property since then. On 4th February 2013 Mr. Jain found that another lock had been put up on the gate of the said property and decided to break open the lock. One Mr. Narender and his son came and claimed they had purchased from the Respondent. It is stated that the above act of the Respondent in claiming to have sold the property to Mr. Narender was in breach of the terms of the partnership and that the dispute as a result thereof had to be referred to arbitration.

4. Learned counsel for the Respondent sought to contend that the property in question has been excluded from the assets of the partnership firm and therefore, the dispute in relation thereto cannot be referred to the arbitration. From a reading of the clauses 6 and 7 of the partnership deed, as extracted hereinabove, it is plain that the aforementioned property did form part of the assets of the firm.

5. According to the Petitioners, one Mr. Vijay Jain was in the possession of the property and the said Mr. Vijay Jain has a dispute with one Mr. Narender as regards possession of the said property. Consequently, no decision in relation to the said property can be taken, which adversely

affects the interests of either of the aforementioned persons, i.e., Vijay Jain and Narender, without their participation. Neither of them, however, is a party to the partnership deed. In other words there is no arbitration agreement between the Petitioner No.2 on the one hand and the aforementioned persons on the other.

6. The Court, in the circumstances, is not inclined to refer the disputes to arbitration.

7. However, given the stand of the Respondent in the present petition, it is evident that if Petitioner No.2 were to file a suit seeking appropriate reliefs qua the property in question, the Respondent herein will not raise an objection on the ground of lack of jurisdiction on account of the arbitration clause in the partnership deed between Petitioner No. 2 and the Respondent.

8. The petition is, accordingly, dismissed with the above observations.

S.MURALIDHAR, J

OCTOBER 25, 2016

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