IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ABITRATION PETITION NO. 61 OF 2016

Mr. Baban Piraji Ghadge
aged 52 years, occupation : business,
residing at H4, 3/4,
Paradise Co-op Housing Society Ltd.
Sector 7, Sanpada, Navi Mumbai. … Petitioner

vs.

1. Mr. Amit Jayant Sheth
aged 41 years, occupation : business
having address at A-6, Sunflower,
Survey No.77/1, Near Prime Rose Mall,
Baner Road, Pune – 411 045.

2. M/s. Avenue Realty
(original M/s. Avenue S.K. Builders
A partnership firm, having address
at A-6, Sunflower, Survey No.77/1,
Near Prime Rose Mall,
Baner Road, Pune – 411 045. … Respondents

....

Mr. Abhishek Pungliya for the Petitioner.
Mr. P.S. Dani, Senior Advocate a/w Mr. Nachiket Khaladkar for the Respondent Nos. 1 and 2.

....

Coram : **A.A.Sayed, J.**
Date : 18 April 2017

ORAL JUDGEMENT :

1 This Arbitration Petition is filed under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “Arbitration Act”) seeking appointment of a sole Arbitrator to adjudicate the disputes between the Petitioner and the Respondent No.1.

2 The Petitioner and the Respondent No. 1 had entered into a Partnership Deed dated 10 December 2013 under the name of 'M/s. Avenue S.K. Builders'. The shares of Petitioner and Respondent No. 1 in the net profit and losses was 50% each. The business of the partnership was of sale and purchase of land and construction of buildings. The Partnership Deed contained a clause (clause 14) for reference to arbitration in case of any disputes between the parties.

3 The case of the Petitioner is as follows:

(1) Prior to entering into partnership with the object of starting business in Pune, on the representation of Respondent No.1, the Petitioner alongwith the Respondent No.1 had purchased a land bearing Survey No.23/1A/1 admeasuring 5 Ares at Balwadi, Pune vide Sale Deed dated 25 October 2011. After executing the Partnership Deed dated 10 December 2013, the partnership firm 'M/s. Avenue S.K. Builders' entered into a Development Agreement dated 10 December 2013 in respect of a land bearing Survey No.23/2A/1/7 admeasuring 5 Ares, Balewadi, Pune, with the owner Shrikant Chimaji Burk. The owner of the land executed a Power of Attorney in favour of the Respondent No.1 being a partner of the partnership firm. On execution of the Development Agreement the partnership firm paid an amount of Rs.50,00,000/- as and by way of refundable security deposit. Inasmuch as on the day of the execution of the Agreement there was

no bank account existing in the name of the partnership firm, as agreed between the partners, the amount was paid from the proprietorship account of Respondent No.1 standing in the name of “Avenue Realtors” with State Bank of Mysore, Baner Branch, Pune. As the Petitioner and the Respondent No.1's share in the partnership firm was 50% each, it was incumbent on both the partners to invest an amount of Rs.25,00,000/- each as their respective shares. However, the Respondent No.1 represented to the Petitioner that he was not in a position to contribute the whole of his share and requested the Petitioner to invest an amount of Rs.40,00,000/- with the assurance that the Respondent No.1 would recompensate the same later. Thus, on the representations of the Respondent No.1, the Petitioner as a partner of M/s. Avenue S.K. Builders transferred an amount of Rs.40,00,000/- on the very next day i.e. 11 December 2013 to the account held by the Respondent No.1 in State Bank of Mysore, Baner Branch, Pune. Thereafter, the partnership firm M/s. Avenue S.K. Builders by Sale Deed dated 1 January 2014 purchased the land bearing Survey No.62/1/1, Baner, Pune, admeasuring 4 Ares from Mrs. Sushama Jayprakash Agarwal for a consideration of Rs.95,00,000/-.

(2) Out of the total consideration of Rs.95,00,000/- payable to the owner of the land Mrs. Sushma Jayprakash Agarwal, a sum of Rs.75,00,000/- was contributed by the Petitioner from his proprietorship current account with Bank of Maharashtra, CBD Belapur Branch. The

balance consideration of Rs.20,00,000/- was contributed by the Respondent no.1 with due representation at the relevant time that as he was undergoing certain financial difficulties he would be paying back his share of the contribution to the Petitioner subsequently. Thus, the Petitioner acting in good faith, transferred the amount of Rs.75,00,000/- to the account of the partnership firm. The Petitioner had paid almost 80% of the consideration amount though he was bound to invest only 50% of it as per the ratio sharing stipulated in the Partnership Deed.

(3) Inasmuch as the Petitioner had invested 80 to 90% of the purchase price of the properties purchased in the partnership firms name, the Petitioner was entitled to get himself reimbursed the amount in excess invested by him. Consequently the Petitioner was paid a sum of Rs.25,00,000/- in the month of December 2014 and a sum of Rs.25,00,000/- in the month of January 2015. The Petitioner further required an amount of Rs.25,00,000/- as he was facing certain financial liquidity problems and requested Respondent No.1 for a sum of Rs.25,00,000/- as and by way of loan. The Respondent No.1 represented that the Petitioner could borrow the amount required from the partnership firm itself and issued a cheque dated 15 February 2015 drawn from the account of the partnership firm. However, when the cheque was presented for payment, the same was dishonoured with

the reason "payment stopped by drawer". The Petitioner was duly surprised and called up the Respondent No.1 who represented that he had intentionally instructed for stop payment as there was no sufficient funds in the partnership account and it was better that the Petitioner arranged for the funds separately. The Petitioner though was disturbed did not anticipate any mischief or wrongdoings at that particular point of time by the Respondent No.1. Though initially the Respondent no.1 was quite responsive and amenable to the involvement of the Petitioner as a partner in the business, the Respondent No.1 slowly started ignoring the Petitioner and at one particular point of time, even refused to show the accounts of the partnership business. When the Petitioner visited Pune in the month of April 2014, he was shocked to see that the name of the partnership firm on the signboard was changed from "M/s. Avenue S.K. Builders" to "M/s. Avenue Realty". On enquiry, the Respondent No.1 even refused entry to the Petitioner on the ground that the Petitioner was no more a partner and stated that the Petitioner has retired from the partnership firm and the partnership firm was being run by the Respondent No.1 and his wife and that he was not entitled to ask from any records. Surprised at this volte face, the Petitioner realized that the Respondent No.1 had committed fraud on the Petitioner and cheated him.

(4) The Petitioner thereafter, immediately approached Corporation Bank, Baner Branch, Pune, seeking for the account

statement of the partnership firm. However, to the shock of the Petitioner, he was refused any details on the ground that he had no authority. The Bank officials represented to the Petitioner that by virtue of two separate documents deposited with them, the Petitioner was no more a partner of the partnership firm. The Petitioner realized that the Respondent No.1 had cheated the Petitioner and had executed fraudulent documents. Therefore, the Petitioner immediately addressed a letter dated 9 April 2015 (which due to typographical error is referred to as 9 April 2014) to the Corporation Bank, Baner Branch, Pune, stating that the Petitioner has been cheated and he has not signed any documents and sought for freezing of the account. However, as the account was not freezed by the Bank, the Petitioner followed up the request by his letter dated 4 May 2015. The Petitioner also insisted for the copies of the documents deposited by the Respondent No.1 with the Bank which the Bank was initially reluctant to share with the Petitioner.

(5) After constant follow up in response to a written Application/letter dated 20 May 2015**,** the Bank furnished the copies of two documents titled as Deed of Partnership dated 30 November 2014 and dated 1 December 2014 respectively. On perusal of the said documents, the Petitioner was shell shocked. The Respondent No.1 had executed a document dated 30 November 2014 titled as 'Deed of

Partnership', whereby the Respondent No. 1 had introduced his wife Mrs. Leena Amit Sheth as a partner. The Petitioner was also shown one of the executants of the said Deed and the signature of the Petitioner is forged. In the said Partnership Deed, the share of the Petitioner was reduced to 25% from the existing 50%. The Respondent No. 1, by the said document also changed the name of the partnership firm from 'M/s. Avenue S.K Builders' to 'M/s. Avenue Realty' (Respondent No.2). The signature of the Petitioner has been forged and the said document titled as 'Deed of Partnership' is a fraudulent document and *void-ab-initio.* The Respondent No. 1 has also executed another document on the very next day i.e. 1 December 2014 titled 'Deed of Partnership' wherein it is shown that the Petitioner had retired from the partnership firm. The signature of the Petitioner in the said document is also forged. In the said fraudulent document, it has been shown that the Petitioner has expressed his desire to retire from the partnership firm with effect from 1 December 2014 and that he had released all his rights, title and interest in the partnership business. The said document, was also forged and void-ab-initio and would have no legal consequence.

(6) The Partnership Firm is titled as M/s. Avenue Realty (Respondent No.2) and the name has been changed from the original name of M/s. Avenue S.K. Builders and both the Partnership Deeds

are one and the same. The Respondent No.1 has accepted huge amounts from third parties by executing various Agreements in respect of the construction being carried out in the partnership firm's property bearing Survey No.23/2A/1/7, Balewadi, Pune, and has siphoned these amounts. The Petitioner has filed a Complaint with the Chatushringi Police Station, however no action has been taken against the Respondent No.1. The Petitioner has obtained an opinion from Mr. Madhusudan Ghanekar, a handwriting expert in respect of the two alleged Partnership Deeds dated 30 November 2014 and 1 December 2014 and the said expert has clearly opined that the signature of the Petitioner has been forged.

(7) The Petitioner has also filed an Application under Section 9 of the Arbitration and Conciliation Act, 1996, bearing Miscellaneous Civil Application No.503/2016 before the District Court, Pune. In the said proceedings the Respondent No.1 appeared and challenged the maintainability of the Application by filing a separate application on the ground that the Petitioner had already retired from the partnership firm and is not entitled to invoke the arbitration clause. However, the said Application has been rejected by the District Court by its order dated 16 July 2016.

(8) In the said Application filed under section 9 of the Arbitration and Conciliation Act, 1996, the Respondent No.1 himself

has produced on record the two fraudulent Deed of Partnership dated 30 November 2014 and 1 December 2014. The fraudulent act of the Respondent No.1 is exposed by the dissimilarity in the documents procured by the Petitioner from the Corporation Bank and the documents produced by the Respondents. The two Deed of Partnership dated 30 November 2014 and 1 December 2014 furnished by Corporation Bank to the Petitioner does not bear any signature of the witness. However, the documents produced by the Respondent No.1 bears supposedly the signature of the witness. This glaring contrast in the documents itself evidences prima facie proof that the documents being relied upon by the Respondent No.1 are murky and establishes that these documents are forged.

(9) Under clause 14 of the Deed of Partnership dated 10 December 2013, there is an Arbitration clause stating that in case of dispute between the partners, the same is to be settled by referring the same to the Arbitrator. Accordingly, the Petitioner invoked the Arbitration clause and issued a notice dated 18 March 2016 to the Respondent No. 1 to refer the dispute to an Arbitrator and called upon the Respondent No.1's consent to the nomination of Shri C.V. Atre, Advocate, as the Arbitrator as named in the notice. The Respondent No. 1 disputed the same by his Reply dated 22 April 2016 by falsely contending that the Petitioner has voluntarily retired from the

partnership firm and the Petitioner is no more partner and was not entitled to invoke the arbitration clause. Inasmuch as, the parties have failed to agree on the appointment of a sole Arbitrator within 30 days of the Respondent No.1's receipt of the Petitioner's request for appointment of a sole arbitrator this Court is requested to appoint a sole arbitrator to adjudicate the disputes and differences between the parties.

(10) In the notice dated 18 March 2016 addressed to the Respondent No.1 invoking the Arbitration clause of the Deed of Partnership dated 10 December 2013, the Petitioner inadvertently due to a typographical error referred to the date of Partnership Deed as “30 November 2014” instead of “10 December 2013” and the word “M/s. Avenue Realty” was used instead of “Avenue S.K. Builders”. The Petitioner therefore addressed another notice dated 14 June 2016 rectifying the said error. In essence the Arbitration clause in the Deed of Partnership dated 10 December 2013 has been duly invoked. The said notice dated 14 June 2016 has also been replied by reply dated 20 June 2016 where Respondent No.1 has not consented for appointment of the Arbitrator. Consequently, the Petitioner is compelled to file this petition under section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.

4 Affidavit-in-Reply has been filed by the Respondent No.1 opposing the Petition. The case of the Respondent No.1 in the Reply is as follows:

(i) It is denied that the Petitioner contributed an amount of Rs.40,00,000/- into the partnership firm in order to acquire the development rights in respect of the land bearing Survey No. 23/2A/1/7 situated at Balewadi, Pune, owned by one Shrikant Chimaji Burk. The Petitioner and the Respondent No.1 had purchased the land bearing Survey No. 23/1A/1 in individual names by virtue of the Sale Deed dated 25 October 2011 and the said amount of Rs. 40,00,000/- was deposited by the Petitioner essentially to utilize the same to commence development activity on the land bearing Survey No.23/1A/1 which was situated on the rear side of the land bearing Survey No. 23/2A/1/7 owned by Shrikant Chimaji Burk.

(ii) The Petitioner decided to retire from the said partnership firm within the short time by accepting an amount of Rs. 75,00,000/- from him and accordingly, the Petitioner had executed the said Deed of Partnership (Deed of Retirement) on 1 December 2014 and in pursuance of the same understanding, the Respondent No.1 had also paid an amount of Rs.50,00,000/- to the Petitioner towards the amount of compensation and it was agreed between the Petitioner and Respondent No.1 to adjust the balance amount of Rs. 25,00,000/- upon settlement of accounts of the Respondent No. 2 firm and alternatively upon settlement of accounts in another partnership firm viz. M/s. Krish Enterprises in which he and the Petitioner are still partners. It is denied that the amount of Rs. 50,00,000/- paid by the Respondent No.1 was accepted by the Petitioner by way of refund towards the excess amount.

5 The Petitioner had filed a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 being Misc. Civil Application No.503/2016 before the District Court, Pune, in the month of April, 2016. An Application was filed by the Respondent No.1 challenging the maintainability of the section 9 Petition. It is pointed out in the said Application by the Respondent No.1 that the Petitioner cannot be permitted to rely upon the arbitration clause in Deed of Partnership dated 30 November 2014 as he is alleging the said Deed to be forged (the Petitioner has relied upon the arbitration clause in the Deed of Partnership dated 30 November 2014 in his averments in the section 9 Petition). It was only after this that the Petitioner issued second notice dated 14 June 2014. The entire theory of the Petitioner having committed typographical error in the first notice is false and an afterthought. The Deed of Partnership dated 30 November 2014 was executed under which his wife became a partner in the partnership firm and Deed of Partnership dated 1 December 2014 by which the Petitioner retired from the partnership firm. The Deed of Partnership

dated 10 December 2013 is replaced by the Deed of Partnership (Retirement of Petitioner) dated 1 December 2014. The Petitioner cannot therefore rely on the clause of the Deed of Partnership dated 10 December 2013 as he has ceased to be a partner in the partnership firm, unless the Petitioner gets the Deed of Partnership (Retirement of Petitioner) dated 1 December 2014 declared as void and illegal. The Handwriting Expert's Report issued by International Forensic Sciences Private Limited on 13 August 2016 submitted by the Petitioner in the Arbitration Petition filed by him in the Pune Court also confirms that the signature of the Petitioner on the Deed of Partnership (Retirement of Petitioner) dated 1 December 2014 is genuine. Hence, the issue of fraud, forgery, cheating etc. needs to be tried by the Civil Court and cannot be gone into by an Arbitrator and detail investigation would necessary to be carried out by the Civil Court. No arbitration agreement exists in the partners as on today and no relationship exists between the parties as partners as on today and there was novation of contract and therefore, the Arbitration Petition is liable to be dismissed.

6 An Additional Affidavit has been filed by the Respondent No.1, wherein reference is made to the Police Complaint against the Petitioner for threatening the Respondent No.1 on telephone. It is averred that the Police has recorded the Statement of the Petitioner, wherein he has admitted that he has retired from the partnership firm.

7 Affidavit-in-Rejoinder has been filed by the Petitioner. He has denied that he had stated to the Police that he has retired from the partnership. He has averred that the signature appearing on the said Statement is not his. It is contended that the fact that his signatures on the alleged Reconstitution Deed dated 30 November 2014 and the alleged Retirement Deed dated 1 December 2014 are forged is beyond doubt and this is confirmed by the fact that copies of the alleged Reconstitution Deed and the Retirement Deed produced to various authorities/forums are different. Whereas the copies of the Reconstitution Deed and the Retirement Deed submitted by the Respondents to the Bank are obtained by the Petitioner from the Corporation Bank, Baner Branch, Pune, show that there were no witnesses, the copies of the alleged Deeds filed by the Respondent No.1 in the proceedings of Regular Civil Suit No. 561/2016 in the Court of C.J.S.D, Pune, (pertaining to stop work notice for construction) show that there were two witnesses, Pappu Maurya and Raghav Kulkarni, to the said alleged Deeds. In the criminal proceedings being Criminal Case No.14718 of 2016 filed by the Respondent No.1, (in relation to the alleged threat by the Petitioner on telephone), copies of the said alleged Deeds submitted by the Respondent No.1 to the Abhyudaya Bank, Baner Branch, Pune, and produced by the said Bank's officer in the said criminal proceedings show that the said Deeds are executed in presence of three witnesses including a third witness, Arun Bhat. The

very fact that three different versions of his said Deeds dated 30 November 2014 and 1 December 2014 are submitted by the Respondent No.1 to various authorities/forum proves that the Deeds are fabricated and forged.

8 Affidavit-in-sur-Rejoinder has been filed by the Respondent No. 1. He has stated that the Petitioner is trying to mislead the Court by producing report of hand-writing expert Shri. Ghanekar. He has obtained the Statement from the record of the Police Station under the Right to Information Act, 2005 and hence, genuineness of the documents cannot be denied or doubted by the Petitioner. The Petitioner has submitted the report before the Pune Court. The Respondent No.1 had submitted a report of another handwriting expert. Subsequently, the Petitioner submitted another detailed report issued by one International Forensic Sciences Private Limited, Pune, in respect of signatures on the Deed of Retirement. The third witness has signed on the Deeds at the instance of the person in charge of the liaisoning work on the apprehension that the Bank may raise an objection.

9 I have heard the learned Counsel for the Petitioner and the learned Senior Counsel for the Respondent.

10 There is no dispute that the parties had initially entered into a Partnership Deed dated 10 December 2013 and the said Partnership Deed contained an arbitration clause (clause 14). Having provided for resolution of disputes through arbitration, ordinarily, the parties cannot be permitted to avoid arbitrator. There are, however, exceptions to this and certain category of cases are not to be referred to arbitration despite the arbitration agreement, as held by the Supreme Court. The question for consideration is, having regard to the nature of dispute in the present case where the Petitioner as come with the case that the subsequent documents [Deed of Partnership (Reconstitution of firm) dated 30 November 2014 and the Deed of Partnership (Retirement of Petitioner) dated 1 December 2014] are forged and fabricated by the Respondent No.1, whether, the matter is required to be referred to arbitration by appointing an arbitrator or the matter would fall under the exceptions indicated above and parties are to be left to take recourse to the remedy of filing proceedings before a Court.

11 The Supreme Court in a recent judgment dated 4 October 2016 in the case of **A. Ayyasamy Vs. A. Paramastivam and Ors., (2016) 10 SCC 386,** after reviewing the various judgments on this aspect has held that mere allegation of fraud simplicitor is not a ground to nullify effect of arbitration agreement between the parties. However, in certain cases the arbitration clause can be ignored by the Court and the Court may refuse reference to arbitration particularly in cases of serious

allegations of fraud/fabrication of documents where the fraud goes to the validity of the contract itself. Though the Supreme Court in that case was dealing with Section 8 of the Arbitration Act, the principles laid down in the said judgment would be applicable to the present case filed under Section 11 of the Arbitration Act. His Lordship Dr. Justice A.K. Sikri, in paras 14, 23 and 25 of the judgment has held as follows:

> "14 In the instant case, there is no dispute about the arbitration agreement inasmuch as there is a specific arbitration clause in the partnership deed. However, the question is as to whether the dispute raised by the respondent in the suit is incapable of settlement through arbitration. As pointed out above, the Act does not make any provision excluding any category of disputes treating them as non-arbitrable. Notwithstanding the above, the Courts have held that certain kinds of disputes may not be capable of adjudication through the means of arbitration. The Courts have held that certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, cannot be referred to arbitration. The following categories of disputes are generally treated as non-arbitrable (See O.P. Malhotra on 'The Law and Practice of Arbitration and Conciliation', 3rd Edn., authored by Indu Malhotra. See also note 10 ibid.):
>
> (i) patent, trademarks and copyright;
>
> (ii) anti-trust/competition laws;
>
> (iii) insolvency/winding up;
>
> (iv) bribery/corruption;

(v) fraud;

(vi) criminal matters.

Fraud is one such category spelled out by the decisions of this Court where disputes would be considered as non-arbitrable.

23 A perusal of the aforesaid two paragraphs brings into fore that the Law Commission has recognized that in cases of serious fraud, courts have entertained civil suits. Secondly, it has tried to make a distinction in cases where there are allegations of serious fraud and fraud simplicitor. It, thus, follows that those cases where there are serious allegations of fraud, they are to be treated as non-arbitrable and it is only the civil court which should decide such matters. However, where there are allegations of fraud simplicitor and such allegations are merely alleged, we are of the opinion it may not be necessary to nullify the effect of the arbitration agreement between the parties as such issues can be determined by the Arbitral Tribunal.

25 In view of our aforesaid discussions, we are of the opinion that mere allegation of fraud simpliciter may not be ground to nullify the effect of arbitration agreement between the parties. It is only in those cases where the court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by the civil court on the appreciation of the voluminous evidence that needs to

be produced, the court can sidetrack the agreement by dismissing the application under Section 8 and proceed with the suit on merits. It can be so done also in those cases where there are serious allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself of the entire contract which contains the arbitration clause or the validity of the arbitration clause itself. Reverse position thereof would be that where there are simple allegations of fraud touching upon the internal affairs of the party inter se and it has no implication in the public domain the arbitration clause need not be avoided and the parties can be relegated to arbitration. While dealing with such an issue in an application under Section 8 of the Act, the focus of the court has to be on the question as to whether jurisdiction of the court has been ousted instead of focusing on the issue as to whether the court has jurisdiction or not. It has to be kept in mind that insofar as the statutory scheme of the Act is concerned, it does not specifically exclude any category of cases as non-arbitrable. Such categories of non-arbitrable subjects are carved out by the courts, keeping in mind the principle of common law that certain disputes which are of public nature, etc. are not capable of adjudication and settlement by arbitration and for resolution of such disputes, courts i.e. public fora, are better suited than a private forum of arbitration. There, the inquiry of the Court, while dealing with an application under Section 8 of the Act, should be on the aforesaid aspect viz. whether the nature of dispute is such that it cannot be referred to arbitration, even if there is an arbitration agreement between that parties. When the case of fraud is set up by one of the parties and on that basis that party wants to wriggle out of that arbitration agreement, a strict and meticulous inquiry into the allegations of fraud is needed and only when the Court is satisfied that the allegations are of serious and complicated nature that it would be more appropriate for the Court to deal with the subject-matter rather than relegating the parties to arbitration, then alone such an application under Section 8 should be rejected.

12 His Lordship Dr. Justice D.Y. Chandrachud, in a separate judgment while supplementing judgment and agreeing with the reasons of His Lordship Dr. Justice A.K. Sikri added his own reasons. In para 57, His Lordship has concluded thus:

> "57. For the above reasons, I agree with the eloquent judgment of my learned Brother in coming to the conclusion that a mere allegation of fraud in the present case was not sufficient to detract from the obligation of the parties to submit their disputes to arbitration. I also agree with the directions issued. A fresh line must be drawn to ensure the fulfillment of the intent of Parliament in enacting the 1996 Act and towards supporting commercial understandings grounded in the faith in arbitration."

13 In the instant case, the Petitioner himself has come with the case that subsequent to the initial Deed of Partnership dated 10 December

2013 there were two documents viz. (1) Deed of Partnership (Reconstitution of the firm) dated 30 November 2014 in which the Petitioner's share in the Deed of Partnership dated 10 December 2013 was reduced from 50% to 25% and the wife of Respondent No.1 was inducted as a partner and (2) Deed of Partnership (Retirement of Petitioner) dated 1 December 2014 in which the Petitioner is shown to have retired from the partnership firm) were forged and fabricated documents and the signatures contained therein, are not his signatures and it amounts to cheating and fraud. The parties have also relied upon atleast three Reports of handwriting Experts which favour them. In my view, the acts alleged constitute serious criminal offences and would involve complex issues and scientific and forensic evidence including that of independent Experts would be necessary to adjudicate the dispute. The existence or non-existence of the initial Partnership Deed hinges on the existence or non-existence of the Partnership Deed (Retirement of Petitioner) dated 10 December 2013 by which the Petitioner is stated to have retired. In my view, considering the nature of dispute, it would be appropriate that the same are decided in a Court of law.

14 This is not a case that the Petitioner has come forward under Section 11, and the Respondent No.1 in order to avoid arbitration has alleged forgery/fabrication/fraud. This is a case where the Petitioner himself has come with a case alleging forgery/fabrication/fraud by the

Respondent No.1 with an intention to cheat him. The validity or otherwise of the initial Partnership Deed dated 10 December 2013 is itself in dispute and the entire case rests on the issue whether the subsequent documents i.e. Deed of Partnership (Reconstitution of firm) dated 30 November 2014 and Deed of Partnership (Retirement of Petitioner) dated 1 December 2014, are forged and fabricated or are genuine. Considering the exposition of law laid down by the Supreme Court in the aforesaid case of **A. Ayyasamy Vs. A. Paramasivam & Ors.** (supra) which considers most of the earlier judgments, it is not necessary for me to deal with all the judgments cited by the learned Counsel for the Petitioner. However for the sake of completion of record it my be stated that learned Counsel for the Petitioner has cited the following judgments:

1 *Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums (2003) 6 SCC 503;*

2 *Swiss Timing Limited Vs. Organizing Committee, Commonwealth Games 2010, Delhi, AIR 2014 Supreme Court 3723;*

3 *Avitel Post Studioz Ltd. & Ors. Vs. HSBC PI Holdings (Mauritius) Ltd, Appeal No. 196 of 2014, decided on 31 July 2014 (Division Bench of this Court);*

4 *Shri. Roshan Lal Gupta Vs. Shri. Parasram Holdings Pvt. Ltd. & Anr., OMP 205/1997 & RSA 131/2002 decided on 11 February 2009 (High Court of Delhi, at New Delhi);*

5 *K.N. Venkiteshwara Pai & Anr. Vs. K.G. Sathish Chandra Babu & Ors., AR. No. 10 of 2010 (High Court of Kerala);*

6 *HSBC PI Holdings (Mauritius) Limited Vs. Avitel Post Studioz Limited & Ors.,Arbitration Petition No. 1062 of 2012 (Single Bench of this Court);*

7 *M/s. Sundaram Finance Limited and Anr. Vs. T. Thankam, Civil Appel No. 2079/2015 on 20 February 20 2015 (Supreme Court of India);*

8 *Sundeep Kumar Bafna Vs. State of Maharashtra & Anr., AIR 2014 Supreme Court 1745;*

9 *VBHC, Mumbai Value Homes Pvt. Ltd. Vs. Laxman Bhoir & Ors. MANU/MH/2008/2015;*

10 *State of west Bengal & Ors. Vs. Associated Contractors (2015) 1 Supreme Court Cases 32.*

15 Though the learned Counsel for the Petitioner vehemently urged that this Court ought to follow the judgment in the case of **Hindustan Petroleum Corporation Limited vs. Pinkcity Midway Petroleums** (supra) which was earlier in point of time than the case of **A. Ayyasamy v/s. A. Paramasivam & ors.** (supra), I am unable to accept his contention. That was a case pertaining to Dealership of Petroleum products and did not involve any serious offences under the Indian Penal Code or validity of the arbitration Agreement itself. The said case is therefore distinguishable on facts. It is pertinent to note that the Petitioner himself has filed a Complaint being Criminal Complaint No.4819/2016 before the Judicial Magistrate First Class, at Pune against the Respondent No.1 and has added two other persons as

accused who are alleged to be the witnesses in the aforesaid two subsequent documents. In this Complaint not only the Petitioner alleged fraud and forgery of the aforesaid two documents, but also of Form B in respect of partnership firm of M/s. Avenue S.K. Builders dated 27 January 2015 notarized on 1 February 2015 before a Notary. According to the Petitioner he had never gone to the office of the said Notary. The Complaint of the Petitioner alleges that the Respondent No.1 has committed serious offences under section 409, 420, 467, 468, 471 read with Section 120 (A) of the Indian Penal Code. Under Section 468 of Indian Penal Code, forgery with an intention that the document forged shall be used for the purpose of cheating is punishable with imprisonment for a term which may extend to seven years, apart from fine.

16 Where the actions alleged tantamount to/constitute serious offences which goes to the validity of the arbitration Agreement itself, it would only be appropriate that the trial is conducted in a Court of law and the witnesses are cross-examined in a witness box in an open Court room and not a closed door private forum. In the present case, as indicated earlier, both the parties have relied upon opinions of hand-writing experts which are favourable to them. If the trial is conducted in a Court, if necessary, the documents can be sent to independent Government Agencies and the Court can issue appropriate and

effective directions in that behalf. The deterrence of rigours of being cross-examined in a Court of law vis-a-vis an arbitral tribunal behind closed doors, cannot be overlooked in cases where the acts alleged tantamount to serious criminal offences. The subject matter of dispute has an eminently criminal profile and it would be more suitable and appropriate that the case is tried in a Court of law.

17 In these circumstances, on facts, I am satisfied that the allegations of forgery and fabrication of the subsequent Partnership Deeds constitute serious criminal offences which permeates the original Deed of Partnership and goes to the validity of the said Deed of Partnership itself and the arbitration clause contained therein. The allegations of fraud are very serious in nature and can in no manner be said to be allegations of fraud simplicitor.

18 In light of the above discussion, no relief can be granted to the Petitioner. The Petition is dismissed. No order as to costs. It will be open for the Petitioner to take recourse to the remedy of filing proceedings in a Court of law.

(A.A.Sayed, J.)