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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
ARBITRATION PETITION (L) NO. 359 OF 2016
AND
ARBITRATION APPLICATION (L) NO. 119 OF 2016**

Harish Kantilal Jobanputra & Anr	...Petitioners
<i>Versus</i>	
Nalin Mohanlal Rughani Alias Thakkar & Anr	...Respondents

Mr PM Shah, *for the Petitioners.*
Mr Bharat Joshi, *with Mehul Shah, for Respondent No. 1.*
Mr Rihal Kazi, *i/b M&M Legal Ventures, for Respondent No. 2.*

CORAM: G.S. PATEL, J
DATED: 19th January 2017

PC:-

1. *Prima facie* there appears to be a very serious dispute about the existence of an arbitration agreement. I have before me an Arbitration Petition under Section 9 along with Arbitration Application under Section 11 of the Arbitration & Conciliation Act 1996.

2. The 1st Applicant/Petitioner entered into a partnership with the 1st Respondent and one Pradeep Rasiklal Patel on 1st June 1996.

All three carrying on business in the name and style of M/s Shree Shreeji Corporation with effect from 1st June 1996. That Partnership Deed admittedly had an arbitration agreement in Clause 20 and about which there is no dispute.

3. Pradeep Patel died on 7th June 2002. Five years later, on 23rd November 2007, the 1st Applicant/Petitioner entered into another Deed of Partnership with the 1st Respondent and one Deviben Pradeep Patel, the widow of Pradeep Rasiklal Patel. This Partnership Deed, a copy of which is at Exhibit “C” to the Arbitration Petition (and separately annexed to the Arbitration Application), admittedly does not contain any arbitration agreement or clause.

4. What Mr Shah submits is that this second partnership firm refers to a reconstituted firm and that all the terms of the first partnership agreement would be carried forward and form part and parcel of the second partnership agreement of 2007. On the face of it this appears to be incorrect. Mr Shah tries to draw support from Clause 1 of the 23rd November 2007 partnership agreement, which reads thus:

“1. The parties of the first part and second part are carrying on business in partnership in the firm and name and style of Messrs. SHREE SHREJI CORPN, under a Deed of Partnership dated 1st June 1996, along with Pradeep Patel due to death of Pradeep Patel the party of contract request the legal heir of Pradeep Patel, Smt Deviben Patel to

join the firm, and they hereby admit into the partnership business of Messrs. SHREE SHREEJI CORPORATION, the party of the third part with effect from 1st day of July 2002 on the terms and conditions hereinafter appearing, Reference to the partnership firm hereinafter shall be construed as reference to the newly constituted partnership firm.”

5. A plain reading of this Clause makes it clear that nothing in this supports Mr Shah’s interpretation. The Clause clearly says that Deviben has been admitted into partnership and that the partnership with her by the 1st Applicant and the 1st Respondent is on the terms and conditions that appear in the 2007 partnership agreement. If there was any ambiguity about this it is completely eliminated by the last portion of Clause 1 which makes it clear that all references are to the partnership firm is the one constituted on 23rd November 2007 and not by the firm as previously constituted when Pradeep Rasiklal Patel was alive.

6. It is not possible to grant any order on the Arbitration Application and, therefore, there is no question of granting any relief in the Arbitration Petition under Section 9.

7. Both the Arbitration Petition and the Arbitration Application are dismissed.

8. It is open, however, for the Petitioners/Applicants to file civil proceedings in a Court of competent jurisdiction. All rights and contentions are specifically kept open.

(G. S. PATEL, J.)