

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.69 of 2019

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1. Rukmini Devi, Wife of Late Shri Lalit Kumar Arya, Resident of J-18, Sector - 11, P.S. - Sector-20, Gautam Budh Nagar, Dist. Noida, Uttar Pradesh.
 2. Ratna Devi, Wife of Late Shankar Prasad, Resident of G-48, Sector- 56, P.S. - Sector-58, Gautam Budh Nagar, Dist- Noida, Uttar Pradesh.
 3. Pushpa Devi, Wife of Shri Pramod Kumar, Resident of R-13, Sector-12, P.S. - Sector-20, Gautam Budh Nagar, Dist.- Noida, Uttar Pradesh.
 4. Amit Kumar, Son of Shri Shankar Prasad, Resident of G-48, Sector - 56, P.S. - Sector-58, Gautam Budh Nagar, Dist. Noida, Uttar Pradesh.
 5. Pritam Kumar, Son of Shri Pramod Kumar, Resident of R-13, Sector -12, P.S.- Sector-20, Gautam Budh Nagar, Dist.- Noida, Uttar Pradesh.

... .. Petitioner/s

Versus

1. M/s Aryan Flavors (Registered Partnership Firm) Rajpati Bhawan, Pankaj Market Road, Behind G.D Mother School, P.S. - Town Thana, Motijheel, Muzaffarpur, Bihar, also at B-8 and 9, Sector 6, P.S. - Sector-20, Gautam Budh Nagar, NOIDA, Uttar Pradesh, Through its Authorized Partner.
2. Chhaya Devi, Wife of Late Vijay Kumar Arya, Permanent resident of J-16, Sector-11, P.S. - Sector-20, Gautam Budh Nagar, Noida, U.P.
3. Vatika Arya, Daughter of Late Vijay Kumar Arya Permanent resident of J-16, Sector-11, P.S. - Sector-20, Gautam Budh Nagar, Noida, U.P.
4. Kalyani Kumari Arya, Daughter of Late Sh. Vijay Kumar Arya Permanent resident of J-16, Sector-11, P.S. - Sector-20, Gautam Budh Nagar, Noida, U.P.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Avinash Trivedi, Advocate
Mr. Archit Rajpal, Advocate

For the Respondent/s : Mr. J.S.Arora, Senior Advocate
Mr. Ravi Bhatia, Advocate
Mr. Manoj Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
CAV JUDGMENT

Date : 04-09-2021

Petitioner No.1 Rukmini Devi has since expired. It is stated at the Bar that her legal heirs, namely petitioner no.2



Ratna Devi; petitioner no.3 Pushpa Devi, petitioner no.4 Amit Kumar and petitioner no.5 Pritam Kumar, are already on record and the right to sue survives upon the remaining petitioners. Registry to make necessary correction in the memo of parties.

2. The instant petition stands filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator for adjudication of the disputes inter se the parties.

3. Parties entered into an agreement to constitute a firm vide Partnership Deed dated 01.07.2016 by the name M/s Aryan Flavours. Clause 15 thereof, provides a mechanism for resolution of the disputes through arbitration.

4. Petitioner No.1 Rukmini Devi vide communication dated 23rd April, 2018 (Annexure P-2) raised certain disputes pertaining to the affairs of the partnership firm. Thereafter certain correspondences were exchanged between the parties in which allegations were made, as also claim and counter claims set up.

5. On 18th of October, 2018 (Annexure P-5), petitioner no.1 Rukmini Devi pressed for settlement of her accounts and on failure thereof, expressed her intent of having the firm dissolved and assets distributed. The same was not done.

6. Vide legal notice dated 22nd April, 2019, petitioners



called upon the respondents to dissolve the partnership firm within a period of one month, failing which clause 15 of the partnership deed dated 01.07.2016 (Annexure-1) be invoked.

7. Thus, the parties were put to notice both with regard to the existence of the dispute; nature thereof; the issues for consideration; and their intent of invoking the arbitration clause.

8. Sri J. S. Arora, learned senior counsel appearing for the respondents opposing the petition has made the following submissions:-

(a) Petitioner No.1 Rukmini Devi has since expired.

(b) Petitioner nos.3 and 5, namely Pushpa Devi and Pritam Kumar, respectively, have voluntarily resigned from their firm on 27.11.2018 and as such are not liable to invoke clause 15 of the Partnership deed.

(c) The notice issued by the petitioners was for dissolution of the firm and settlement of the accounts which can only be done under and in terms of Sections 44 and 48 of the Indian Partnership Act, 1932.

9. Insofar as death of petitioner no.1 Rukmini Devi is concerned, the issue needs no further deliberation for the right to sue devolves upon the remaining petitioners and as the Court is informed there being no other heirs claiming right in her



estate.

10. Insofar as the partners, namely petitioner no.3 and 5 namely Pushpa Devi and Pritam Kumar, respectively, having resigned from the partnership firm is concerned, it would not take away their rights for adjudication of disputes arising out of partnership, more so, for prior to such resignation, disputes inter se the partners with respect to the management and affairs of the firm had already arisen, with the partners notified seeking invocation of the arbitration clause.

11. Coming to the next contention, the instant petition is not for a dissolution of the partnership firm, but adjudication of the disputes arising out of the management and affairs of the partnership firm, which, in fact, already stood dissolved by virtue of Section 43 of the Partnership Act, 1932 considering the nature of the partnership which was “at will”, in relation to which the petitioners had already served a legal notice.

12. In fact, the issue is no longer *res integra* for the Apex Court in **V.H. Patel & Company and others Versus Hirubhai Himabhai Patel and others, (2000) 4 SCC 368**, has clearly held that where there is a clause in the articles of partnership or agreement or order referring all the matters in difference between the partners to arbitration, the Arbitrator would have



power to decide whether or not the partnership will be dissolved and award its dissolution. For the principles laid down still hold good, with profit, the relevant part of the report is reproduced as under:-

“11. A contention had been raised before us that the arbitrator has no power to dissolve a partnership firm, especially on the ground that such dissolution is based on a ground or any other ground which renders it just and equitable to dissolve and that is the power of the court. It was pointed out that mere strained relationship between the partners would not be enough to dissolve a partnership. It is not necessary for us to examine this contention in this case when the partners sought for dissolution of the partnership on various grounds enumerated in Section 44(c) to (f) (*sic*) may also be sufficient and may not be necessary to invoke the inherent jurisdiction of a court such as dissolution is just and equitable. If there has been breach of agreement and conduct is destructive of mutual confidence certainly such conduct can give rise to a ground for dissolution of the partnership. While mere disagreement or quarrel arising from impropriety of partners is not sufficient ground for dissolution, interference should not be refused where it is shown to the satisfaction of the adjudicating authority that the conduct of a partner has been such that it is not reasonably practicable for other partners to carry on the business in partnership. For instance, dissolution should be ordered if it is shown that the conduct of a partner has resulted in destruction of mutual trust or confidence which is the very basis for proper conduct of partnership. It is not necessary for us to go into or seek for an explanation of the reasons which may have induced the disputes between the partners. Dissolution will arise where it appears that the state of feelings and conduct of the partners have been such that business cannot be continued with advantage to either party.

12. So far as the power of the arbitrator to dissolve the partnership is concerned, the law is clear that where there is a clause in the articles of partnership or agreement or order referring all the matters in difference between the partners to arbitration, the arbitrator has power to decide whether or not the partnership shall be dissolved and to award its dissolution. (See *Phoenix v. Pope* [(1974) 1 All ER 512 (Ch D)] .) Power of the arbitrator will primarily depend upon the arbitration clause and the reference made by the court to it. If under the terms of the reference all disputes and difference arising between the parties have been referred to



arbitration, the arbitrator will, in general, be able to deal with all matters, including dissolution. There is no principle of law or any provision which bars an arbitrator to examine such a question. Although the learned counsel for the petitioner relied upon a passage of Pollock & Mulla, quoted earlier, that passage is only confined to the inherent powers of the court as to whether dissolution of partnership is just and equitable, but we have demonstrated in the course of our order that it is permissible for the court to refer to arbitration a dispute in relation to dissolution as well on grounds such as destruction of mutual trust and confidence between the partners which is the foundation therefor.”

[See also **Banarasi Das v. Kanshi Ram**, AIR 1963 SC 1165; **Joginder Pal v. Pushpinder Kumar**, 2016 SCC Online P&H Online P & H 520; **Ketineni Chandrasekhar Rao v. Boppana Sesagiri Rao**, AIR 2017 Hyd 30; **Hemendra Babulal Shah H.U.F. v. Babulal Shivlal Shah**, 2006 (3) Guj LR 2582]

13. In **Tejinder Pal Grover v. Murari Lal Gupta**, [(2008) 2 Arb LR 204: (2008) 3 Raj 272 (P& H)], it has been held that “it is not inconsistent for a party seeking to establish that he had not retired from the partnership, to pray for dissolution of the partnership”.

14. The Apex Court in **Mayavati Trading Private Limited Versus Pradyut Deb Burman**, (2019) 8 SCC 714, has elaborately discussed the scope of power under Section 11(6) of the Act and *inter alia* held that the Court is to confine itself only to the examination of existence of arbitration



agreement and the disputes.

15. In the instant case, there is a written agreement; containing an arbitration clause; and existence of disputes.

16. Hence, for the aforesaid reasons, the opposition to the petition is wholly unsustainable and as such dispute is required to be referred to the arbitration of Arbitrator to be appointed by this Court.

17. Hence, this Court is inclined to allow the petition by appointing an arbitrator.

18. As such, Hon'ble Mr. Justice Prabhat Kumar Jha, Retired Judge of the Patna High Court, Patna is appointed as learned Arbitrator to adjudicate all disputes arising out of the partnership deed dated 01.07.2016 (Annexure-1) entered into between the parties to the *lis*.

19. All pleas and issues raised, on merits, are left open to be considered and decided by the learned Arbitrator.

20. Learned Arbitrator shall be entitled to fees as per Schedule IV of the Arbitration Act.

21. Parties undertake to fully cooperate and not take any unnecessary adjournment.

22. The proceedings, during the time of current Pandemic Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode.

23. It is expected of the learned Arbitrator to adjudicate the disputes expeditiously.



24. Joint Registrar (List) is directed to communicate the order to the learned Arbitrator.

25. Learned counsel for the parties also undertake to communicate the order to the learned Arbitrator. In fact, they volunteered to appear before him, through digital mode on 20th of September, 2021 and apprise him of the passing of the order.

26. Parties shall file their statement of claims before the learned Arbitrator on such date of hearing which he may fix, as per mutual convenience.

27. The Request Petition stands disposed of in the above terms.

28. Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

Sujit/Ashwini

AFR/NAFR	AFR
CAV DATE	28.07.2021
Uploading Date	07.09.2021
Transmission Date	

