

IN THE HIGH COURT OF JUDICATURE AT PATNA

REQUEST CASE No.4 of 2023

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Jai Shankar Agarwal, Son of Late Satya Narain Modi, Resident of Bazar Samiti, Rampur Road, Tapowan Colony, P.S. Bahadurpur, Patna 800006

... .. Petitioner/s

Versus

Raj Kumar Modi, Son of Late Satya Narain Modi, Resident of Bazar Samiti, Rampur Road, Tapowan Colony, P.S. Bahadurpur, Patna.- 800006

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Nagadeo Choubey, Advocate
		Mr. Amaresh Kumar Sinha, Advocate
		Mr. Pankaj Maijorwar, Advocate
For the Respondent/s	:	Mr.Rajesh Mohan, Advocate
		Mr. Nishant Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 03-11-2023

The petitioner seeks for an arbitration for the purpose of settling a dispute which arises from a partnership agreement from which he admittedly resigned. The other partner was his brother and now the brother has entered into a partnership with the respondent's son. The petitioner does not have any dispute with respect to the new partnership firm. The dispute now raised is with respect to the partnership which was in existence between himself and the respondent and the claim is also in the nature of the disputes arising when the partnership itself was in



existence, which survives even after his retirement, is his claim.

2. The respondent, however, submits that there was earlier a Civil Suit filed which was withdrawn and later this request case has been filed. It is also submitted that since the earlier partnership agreement is no more in force, there is no question of any arbitration being enforced since, with the retirement the arbitration clause also cease to exist.

3. Admittedly, there was a partnership between the petitioner and the respondent. The petitioner's claims are also with respect to the amounts which were due to him by virtue of the partnership agreement. The question as to whether an arbitration would be maintainable could also be considered by the Arbitrator appointed.

4. Learned counsel for the respondent also produced before me a judgment of the Hon'ble Supreme Court in ***Lata Construction and others v. Dr. Rameshchandra Ramniklal Shah and another; (2000) 1 SCC 586***. The dictum in the said decision is with respect to novation of contract as per Section 62 of the Contract Act, 1872. The dictum was also that when the terms of the old and new contracts are inconsistent, they cannot stand together and the old contract would be deemed to be rescinded. In fact, the petitioner does not put forth any claim as



per the new partnership agreement between the respondent and his son. The only claim is arising from the partnership as it existed prior to his retirement.

5. In such circumstances, as agreed by the parties, Hon'ble Mr. Justice Ramesh Kumar Datta, a former Judge of the Patna High Court, is appointed as learned Arbitrator to adjudicate all disputes arising out of the agreement entered into between the parties to the *lis*.

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

7. The learned Arbitrator shall be entitled to fee as per the schedule of the Act.

8. Since the dispute arises out of an agreement of the year 2018, the hearing be expedited.

9. The issue of limitation, if any, is left open to be raised before the Arbitral Tribunal.

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

11. Learned counsel for the parties also undertake to communicate the order to the learned Arbitrator.

12. The Arbitral Tribunal shall issue notice to the respondents.



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

(K. Vinod Chandran, CJ)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	06.11.2023
Transmission Date	

