

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 129 OF 2019**

Everest Cement Pipe Industries,

Through its partners:

Smt. Kavita Shitalkumar Mulaye and others ... Petitioners

vs.

Everest Cement Pipe Industries,

Through its partner:

Smt. Sapna Shital Patil ... Respondent

Mr. Prithviraj S. Gole for petitioners.

Mr. Rahul Ramraje Patil for respondent.

CORAM : MANISH PITALE, J

DATE : 2nd JANUARY, 2023

P.C. :

. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator in the context of Clause 11 of the partnership deed dated 5th April, 2014.

2. Considering the language of the said clause, this Court had adjourned the present petition for the learned counsel for the parties to address this Court on the aspect as to whether the clause would qualify as an arbitration clause and to refer to judgements, if any.

3. The learned counsel could not place their hands on relevant judgments, particularly in the light of the peculiar language of Clause 11 of the partnership deed.

4. This Court has considered the language of the said clause. It is in Marathi. Upon being loosely translated, the purport of the said clause is that if any dispute arises, as regards the terms and conditions of the partnership

deed, amongst the partners, the same would be resolved by appointment of *panchas* unanimously by all the partners and that such decision of the *panchas* shall be binding on all the partners. There is no reference to arbitration, much less to the aforesaid Act.

5. The learned counsel for the respondent has invited attention of this Court to Clause 7 of the said partnership deed, which specifically provides for partnership at will and that upon death, resignation or incapacity of a partner, the said firm will not be dissolved, but it may continue, if all the partners so agree or if they decide to enter into a new partnership.

6. In the present case, it is undisputed that there were three major partners and two minor partners were admitted to the benefits of the partnership. Two of the major partners died, as a result of which, only one major partner survived. The petitioners in this petition are legal representatives of one of the deceased partners. In these peculiar facts, learned counsel for the respondent submits that Clause 11, apart from not being arbitration clause, is rendered unworkable. There is substance in the contention raised on behalf of the respondent.

7. In view of the peculiar facts of the present case and the vague language of Clause 11 of the partnership deed, this Court is of the opinion that the present petition cannot be granted.

8. Accordingly, the petition is dismissed.

9. The parties would be at liberty to pursue such remedies as are available in law.

(MANISH PITALE, J)