



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 4685 of 2023

M/s Aditya Rice Mill, Amgaon District Gondia and others

Versus

Jayprakash Nathmal Bhattad

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.H.Daga, Advocate for petitioners.

Shri A.R.Agrawal, Advocate for respondent.

CORAM : ANIL S. KILOR, J.

DATED : 18th DECEMBER, 2023.

Heard.

2. The order below Exhibit 14 dated 11th October, 2019 passed by the Civil Judge, Junior Division, Amgaon in Regular Civil Suit No. 47 of 2018 rejecting application moved by the petitioner under section 8 of the Arbitration and Conciliation Act read with Order VII Rule 11 of the Code of Civil Procedure, 1908 for dismissal of the suit, is under challenge.

3. The respondent no.1 is the original plaintiff in Regular Civil Suit No. 47 of 2018 which was filed with a prayer to declare that the plaintiff is the deemed

partner of defendant no.1 as per partnership deed executed on 1st July, 1991. On service of notice, the defendant nos. 1 and 2 filed an application under Section 8 of the Arbitration and Conciliation Act read with Order VII Rule 11 of the Code of Civil Procedure seeking dismissal of the suit.

4. To the said application, the plaintiff filed a reply and it was pointed out that there is no arbitration agreement as the agreement upon which the defendant nos. 1 and 2 have relied upon, it was not signed by the plaintiff or any of the parties.

5. The learned trial Court rejected the application on the ground that the arbitrator will not be competent to deal with the issue whether the plaintiff is a deemed partner or not as per the partnership-deed executed on 1st July, 1991 because it requires production of oral and documentary evidence by either of the parties.

6. Apparently the reasons recorded by the learned trial Court to reject the application is contrary to the well settled principle of law and therefore the order is not sustainable.

7. However, it is also required to be noted that despite the objection raised by the plaintiff about the non existence of the arbitration agreement and though

the said point goes to the root of the matter, the learned trial Court failed to touch the said point and ignored the said argument.

8. Thus, I am of the opinion that the matter needs to be remanded back to the learned trial Court to decide the application Exhibit 14 after hearing both the parties. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The Order Below Exhibit 14 dated 11th October, 2019 passed by the learned Civil Judge, Junior Division, Amgaon in Regular Civil Suit No. 47 of 2018, is hereby quashed and set aside;
- iii. The matter i.e. Application Exhibit 14 in Regular Civil Suit No. 47 of 2018 is remanded back to the learned Civil Judge, Junior Division, Amgaon to decide the same afresh after hearing both the parties.

[ANIL S. KILOR, J.]