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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO.99 OF 2024
WITH
INTERIM APPLICATION NO.13920 OF 2024

Shri Amar Vilas Patil

...Appellant /
Ori. Defendant

Versus

Shri Vinod Ashok Ovhal

...Respondent /
Ori. Plaintiff.

Mr. Bharat Gadhavi with Mr. Hitesh Mavadia for the Appellant.

Mr. Kishor Patil i/b. Mr. Pratik Rahade for the Respondent.

CORAM : R.I. CHAGLA J.
DATE : 10TH DECEMBER, 2024.

ORDER :

1. The learned Advocate appearing for the Appellant has brought to this Court's notice the impugned Order dated 29th June, 2024. In the operative part at paragraph 15, the learned 11th Joint Civil Judge, Senior Division, Pune has merely held that the present Plaintiff has not signed the reconstituted Deed of Partnership dated 18th August, 2021 and that it is a well settled position of law that for referring the parties to arbitration the subject matter of the action is required to be the same as the subject matter of the arbitration

agreement and if there is no signature of one of the parties to the Suit on the arbitration agreement then such matter can not be referred to arbitration. In view thereof, the Application under Section 8 of the Arbitration and Conciliation Act, 1996 has been rejected on the ground that the Application is beyond the scope of Sections 7 and 8 of the Act.

2. Considering the finding of the learned 11th Joint Civil Judge, Senior Division, Pune in the impugned Order which is being challenged under Section 37 proceedings before this Court, I am of the view that the learned Judge has not considered the prevailing law laid down by the Supreme Court and this Court as to reference of the subject matter of the Suit to arbitration. There is no mention of the law which the learned Judge relied upon in arriving at the above finding. The judgments which have been relied upon by both sides in these proceedings should have been considered by the learned Judge whilst passing the impugned Order.

3. In that view of the matter, impugned Order is required to be set aside and the matter remanded back to the 11th Joint Civil Judge, Senior Division, Pune for consideration of law relied upon by both sides and upon which a reasoned order is required to be passed.

4. Accordingly, the impugned Order dated 29th June, 2024 is set aside and matter remanded back to the 11th Joint Civil Judge, Senior Division, Pune to decide the application under Section 8 of the Act *denovo* preferably within a period of four weeks from the uploading of this Order.

5. The statement which had been made by the learned Counsel for the Appellant and recorded in the Order dated 21st October, 2024 passed by this Court viz. that the Appellant will not create third party rights in respect of their property which is the subject matter of Civil Suit No.2155 of 2023 and which statement has been accepted as an undertaking to this Court shall continue to operate till the disposal of the Application under Section 8 by the 11th Joint Civil Judge, Senior Division, Pune, to whom the matter has been remanded.

6. The Arbitration Appeal No.99 of 2024 is accordingly disposed of in the above terms. The Interim Application (L) No.13920 of 2024 does not survive and is accordingly disposed of.

[R.I. CHAGLA J.]