OCD 2

ORDER SHEET
AP-COM/461/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

SHREEN DEVELOPERS PRIVATE LIMITED
VS
MOHAMMAD ARIF

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 11th August, 2025.

Appearance:
Mr. Arik Banerjee, Adv.
Mr. Shaunak Ghosh, Adv.
Mr. Rajib Mullick, Adv.
Mr. Biswaroop Ghosh, Adv.
...for the petitioner

Mr. Farooque Ali, Adv.
...for the respondent

The Court:

1. This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the ‘said Act’). The petitioner claims to be a partner of the respondent. Allegedly, the parties entered into the partnership agreement on 18th June, 2015. The respondent was described as the first partner who was already carrying on a business of construction, as a sole proprietor of the firm, Ibrahim Constructions. The respondent, as the sole proprietor, had entered into a joint venture/development agreement dated December 1, 2011, with

the owners of the premises situated at premises no.108, 109 and 110 (Old) Bowbazar Street, presently known as Bipin Behari Ganguly Street. The three premises have been amalgamated into premises no.108, B.B. Ganguly Street, Police Station - Muchipara, Kolkata.

2. Pursuant to the development agreement dated December 1, 2011, the firm Ibrahim Construction which was the sole proprietorship of the first partner/respondent, obtained a sanction from the Kolkata Municipal Corporation for the building.

3. The partnership deed provided that the respondent invested and incurred expenses to the tune of Rs.27 lakhs. The petitioner was also carrying on business of similar nature in its individual capacity and the parties agreed to join hands to carry on the ongoing construction as per the development agreement entered into between the respondent and the owners of the land. It is contended that the petitioner has also invested substantial amount. The parties reduced the terms and conditions of the partnership in relation to the development agreement into various terms and conditions. Some of which are quoted below:

> "*4. NATURE OF BUSINESS:*
>
> *That the Business of the partnership firm shall be that of Construction, promotion and development of lands and Buildings and/or such other business as may be decided by the partners from time to time. The said Development Agreement dt.01-12-2011 & all other documents, arrangements, agreements etc. for the said property at premises no.108, B.B. Ganguly Street, P.S. Muchipara, Kolkata – 700012 shall be now*

deemed to be belonging to and in the name of the Partnership firm.

5. MANAGEMENT AND CONDUCT OF BUSINESS:

The business of the partnership shall be wholly carried on, managed and conducted by all the parties who shall at all times during the partnership diligently and faithfully employ themselves in and about the business of the partnership, and carry on, manage and conduct the same for the greatest advantage of the partnership. Each Partner shall be just and faithful to the other partners and at all times give full information and explanation of all matters relating to the affairs of the partnership and forthwith pay all moneys, cheques and negotiable instrument received on account of the firm into the firm's bank or to the Partnership account.

6. REMUNERATION TO PARTNERS :

The partners shall be entitled to remuneration in their profit sharing ratio and the total remuneration payable will be calculated at the end of every financial year as per the provisions of Income Tax Act, 1961.

a) *The distributable remuneration shall be credited to the accounts of the parties hereto in their Profit and Loss sharing ratio.*
b) *After deduction of the aforesaid distributable remuneration and firm's Income tax the balance shall be credited to the account of partners in their profit and loss sharing ratio.*

7. CAPITAL :

That such contribution and investment towards the capital will be arranged by the partners as and when required in their profit sharing ratio for the smooth running of the business of the partnership firm or as mutually agreed amongst the partners from time to time. Out of total investment of Rs.27,00,000/- by the First Partner for the said Property, Rs.24,00,000/- shall be treated as Initial Capital of First Partner and Rs.3,00,000/- shall be reimbursed to him by the Second Partner as his (Second Partner's) Initial Capital. However, all further investment for Development of the said Property as well as eviction costs of the three tenanted shops shall be arranged, contributed and brought in by the Second Partner as and when required towards his Capital.

8. …

9. PROFIT AND LOSS SHARING RATIO :

That at the end of each accounting year starting from 1st April and ending on 21st day of March, the accounts shall be closed and a Profit and Loss Account shall be drawn up after meeting all the necessary costs, charges and expenses incurred in partnership firm and the profit or loss as ascertained shall be divided or borne by the partners in the equal sharing ratio i.e. 50% to the First Partner and 50% to the Second Partner.

10. …

11. …

12. …

13. …

14. …

15. Any party hereto shall not, without the consent of the other-

a. submit any dispute with any other person to arbitration or com-promise or relinquish the claim,

b. withdraw any suit or legal proceedings filed by the Firm.

c. admit any liability of the Firm.

d. acquire or dispose of any immovable or moveable property, except the stock, in trade in the ordinary course of business of the Firm.

e. enter into partnership or other business unilaterally with any other person.

f. assign or transfer his or its share or any interest in the Firm.

g. admit any person as a partner of the firm,

h. borrow any moneys for or in the name of the firm, or create any security or change on the assets of the firm

i. enter into any contracts except contracts in the regular course of business of the Firm,

j. stand as a guarantor or security for any person in the name of the firm or for and on behalf of the firm"

4. It is pertinent to mention that the partnership agreement contains a clause with regard to settlement of dispute by arbitration. Clause 18 is quoted below:

   > "*18. ARBITRATION :*
   >
   > *That any dispute or differences that may arise between the partners or their representatives of heirs with regard to the construction of the instrument of regarding the accounts, profit and losses of business of the rights and liabilities of the partners or the dissolution or winding up of the business or any other matter relating to firm, shall be referred to arbitration in terms of the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification thereunder.*"

5. The petitioner has approached this Court for interim protection on various grounds. First of such ground is that the respondent was denying the partnership agreement and alleged that the documents with regard to the said agreement which were required to be filed before the Registrar of Firms, has been forged. The respondent also allegedly entered into another agreement with a third party, thereby, committing breach of the terms of the subject partnership deed. Hence, the petitioner apprehends that the respondent will alienate the petitioner's share in the developer share and also deprive the petitioner from enjoying the profit.

6. Mr. Ali, learned advocate for the respondent submits that the land owners are necessary parties as the development of the plot was the subject matter of the dispute. He further submits that there are

allegations of forgery and fraud which are to be decided in an appropriate proceeding. The petitioner has not yet invoked arbitration. The arbitration clause would not cover the dispute involved in the instant case.

7. This Court has considered the rival contention and finds a strong, prima facie, case for grant of an interim protection to the petitioner. The clauses of the partnership deed which have been quoted herein, prima facie, appear to have been violated by the respondent. Balance of convenience and inconvenience require that the rights and liabilities of both parties emanating from the partnership agreement should be protected. The developer's share is available from the development agreement itself and the partnership deed reveals that the petitioner has a share in the development agreement. There is no denial of the fact that there was a partnership between the parties. There is no denial of the fact that the petitioner and the respondent both have invested in the project and have a share in the profit as also in the developer's share. Both parties allege that the other was alienating the developer's share without the knowledge and consent of the partner. The respondent has attempted to enter into a partnership with a third party.

8. Under such circumstances, the construction work will continue. However, status quo with regard to the developer's share shall be maintained to the extent that the said developer's share shall not be alienated or transferred to any third party for a period of three months. If any bookings have been taken, those shall not be disturbed, but final handover shall not take place for a period of three months. Within such

period, the parties shall take steps for constitution of an arbitral tribunal. Upon expiry of the aforementioned period, the parties will be at liberty to approach the learned arbitrator for further interim orders, if the situation demands.

9. These observations are all, prima facie, and the learned arbitrator shall proceed independently.

10. This order shall not prevent the parties from availing of other legal recourses as they deem fit and proper.

11. The other contention of Mr. Ali that, the land owner should have been impleaded in this proceeding is not required to be answered, in view of the fact that dispute herein is restricted to the disputes which the partners have against each other with regard to the rights and liabilities arising from the partnership agreement. This point is kept open to be adjudicated at the appropriate stage.

12. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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