

OCD 19

ORDER SHEET  
AP-COM/747/2025  
IN THE HIGH COURT AT CALCUTTA  
COMMERCIAL DIVISION  
ORIGINAL SIDE

DR. SHREE NARAYAN JHA  
VS  
ANITA NANKANI @ ANITA DAYAL DAS NANKANI

BEFORE:  
The Hon'ble JUSTICE SHAMPA SARKAR  
Date: 11<sup>th</sup> December, 2025.

*Appearance:*  
*Mr. Aniruddha Chatterjee, Sr. Adv.*  
*Mr. Surya Prasad Chattopadhyay, Adv.*  
*Mr. Arjun Samanta, Adv.*  
*Mr. A. Chatterjee, Adv.*  
*Mr. S. Nandi, Adv.*  
*...for the petitioner*

*Mr. Anirban Ray, Sr. Adv.*  
*Mr. Wasim Ahmed, Adv.*  
*Mr. M. Shehabuddin, Adv.*  
*Mr. Sounak Banerjee, Adv.*  
*...for the respondent*

The Court:

1. The petitioner has filed this application for appointment of an arbitrator in terms of the Clause 16 of the Deed of Partnership dated September 2, 2013.
2. The petitioner is the father of one of the partners (since deceased). The respondent is the other partner. The petitioner's son Ashish Narayan Jha entered into the partnership agreement with the respondent. Late

Ashish Narayan Jha was referred to as the first party in the deed and the said expression deemed to mean and include heirs, executors, administrators, legal representatives and assigns of the first part. The petitioner also relies on the Letters of Administration granted in his favour by the competent civil court in respect of the estate of the deceased. According to the petitioner, on the strength of the said Letters of Administration and the description of the first party as contained in the Deed of Partnership, he has the right to invoke the arbitration clause, even if he was a non-signatory. The arbitration clause provides that all disputes and differences arising between the partners or between their respective legal representatives, whether during the continuance of the partnership business or upon termination thereof, shall be referred to one Arbitrator, if the parties so agree. The parties may also approach the court for reference of the dispute to arbitration. The venue of arbitration was agreed to be Kolkata and it was further agreed that the Courts of Kolkata would have exclusive jurisdiction to adjudicate upon all disputes arising out of the partnership firm.

3. Mr. Chatterjee, learned senior advocate for the petitioner submits that several disputes had arisen out of the said partnership business and the respondent had committed breach of the covenants contained in the partnership deed, during the lifetime of his son and even thereafter. Notices were issued to the respondent for accounts, compensation and return of necessary documents of the partnership business. As the disputes remained unresolved, a notice invoking arbitration was issued

on May 23, 2024, for reference of the dispute to arbitration and the petitioner nominated a learned advocate to act as the sole arbitrator to adjudicate upon the disputes arising out of the said partnership deed. The respondent allegedly did not act on the basis of such notice and this application has been filed.

4. Mr. Anirban Ray, learned senior advocate appearing for the respondent submits that the petitioner had waived his right to approach this Court by invoking arbitration clause, inasmuch as, the petitioner had filed a suit before the learned Civil Judge (Senior Division), 8<sup>th</sup> Court at Alipore on the selfsame grievances and issues. The respondent filed a written statement and both the parties were contesting the suit. The suit was at the stage of evidence. As the suit proceeded and all parties had participated in the suit in spite of the existence of the arbitration clause in the Deed of Partnership, Section 4 of the Arbitration and Conciliation Act, 1996 was applicable. The filing of the suit and the participation of the petitioner in the said suit would amount to waiver of the provisions of the Arbitration and Conciliation Act including waiver of the arbitration agreement.
5. Mr. Ray relies on the plaint to substantiate that some of the reliefs relate to the partnership business and the averments made in the various paragraphs of the plaint would clearly demonstrate that the suit was a comprehensive one, which included other disputes between the parties as also the dispute arising out of the partnership business. Reliance has been placed on the notice invoking arbitration to substantiate that averments relating to compensation on account of

breach of the obligations arising out of the partnership deed, for rendering of accounts, return of documents etc., were the subject matter of the suit.

6. This Court, *prima facie*, finds that disputes arising out of the partnership agreement have been incorporated in the plaint. However, the question is whether the referral court should make a deeper enquiry by comparing the subject matter of the suit and the claims mentioned in the notice invoking arbitration and thereby, refuse to appoint an arbitrator. The arbitration clause is restricted to the Deed of Partnership which was the underlying contract between the petitioner's son and the respondent. The petitioner alleges multiple breaches of the covenants of the said deed. The arbitration clause is restricted to the disputes which arise exclusively out of the partnership deed. Reference is made to the clause which states that, on the death of a partner, the heirs and legal representatives of the deceased partner will continue with the partnership business and in case of refusal by the heirs of the deceased partner to join as a partners, the surviving partner will have a right to purchase the shares of the deceased partner. In this case, the notice invoking arbitration demonstrates that the petitioner had requested reconstitution. This is not a subject matter in the suit. The commonality of the issues involved in the suit and the notice invoking arbitration, cannot be decided by the referral court. The scope of enquiry by the referral court is limited to the existence of an arbitration clause and nothing beyond that. While the scope of the suit may be wider and larger, the scope of arbitration will be limited to the rights

and obligations of the parties arising out of the said partnership agreement and breaches complained of. One of the allegations in the notice invoking arbitration is breach of clauses 11, 14 and 15 of the said partnership agreement. Section 40 of the said Act provides that an arbitration agreement shall not be discharged by the death of any of the parties thereto. Moreover, the petitioner is a legal representative of the deceased partner and the arbitration clause provides that all disputes between the partners or their legal representatives shall be referred to arbitration.

7. This Court, prima facie, finds that the petitioner, who claims to be legal representative of the deceased partner as father, has a right to invoke arbitration not only on the strength of the Letters of Administration but also as per the description of 'first party' as appearing in the agreement and by virtue of Section 40 of the Arbitration and Conciliation Act.
8. The objections of Mr. Ray are on jurisdiction and arbitrability. Section 16 of the said Act allows the learned arbitrator to rule on his jurisdiction, which includes the issue of arbitrability of the dispute. Thus, whether there was waiver of the arbitration agreement upon filing of the suit, is a question of jurisdiction. Thus, the objections raised by Mr. Ray with regard to overlapping of the claims in the suit and in the notice invoking arbitration shall be decided by the learned Arbitrator. Until and unless the statement of claim is filed, it is not possible for the adjudicating authority or the court, as the case may, be to understand such overlapping of the disputes and whether there is waiver of the provisions of the Arbitration and Conciliation Act, 1996 including

Section 7 thereof on account of commonality of the subject matters and reliefs sought for in the two proceedings.

9. The observations in this order are restricted to the, prima facie, satisfaction of the Court that the matter should be referred to arbitration. All issues are kept open, to be raised by the respective parties before the learned arbitrator.
10. Under such circumstances, the Court appoints Justice Siddhartha Roy Chowdhury, Former Judge of this Court, as the learned Arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his remuneration.
11. AP-COM/747/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)