

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION
(ORIGINAL SIDE)

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

In AP-COM/363/2024
[Old case no. AP/618/2023]

DIVYA JALAN
Vs
SOORAJMULL NAGARMULL AND ORS

For the petitioner	: Mr. S.N. Mookherjee, Senior Advocate Mr. Sarvapriya Mukherjee, Advocate Mr. Biswajit Kumar, Advocate Mr. Yash Singhi, Advocate Mr. Aayush Lakhotia, Advocate
For the respondent no.7	: Mr. Ratnanko Banerji, Senior Advocate Mr. Raj Ratna Sen, Advocate Mr. Suvradal Chowdhury, Advocate Ms. Sristi Barman Roy, Advocate Ms. Rupsa Ganguli, Advocate Ms. Anjali Das, Advocate
For the respondent no.17	: Mr. Rupak Ghosh, Advocate Mr. Soumyajit Mishra, Advocate
For the respondent nos. 9, 11, 19, 20 22 and 27	: Mr. Sabyasachi Chowdhury, Senior Advocate Mr. Deepak Jain, Advocate
Reserved on	: 26.11.2025
Judgment on	: 05.12.2025

Ravi Krishan Kapur, J.:

1. This is an application under section 11 of the Arbitration and Conciliation Act, 1996. The petitioner is a legal representative of Late Mohan Lal Jalan and claims rights on the death of her father-in-law Mr. Bajrang Prasad Jalan (son of Mohan Lal Jalan) and her husband Late Sandip Prasad Jalan.
2. Briefly, the disputes between the parties pertain to the partnership business of Soorajmall Nagarmall, the respondent no.1 firm which

commenced operations in the early 1900s. On 6 December 1943, a reconstituted partnership deed of the firm was executed by and between the partners. The last notice of change in the constitution of the firm was on 6/7 June 1963 and in terms thereof, the shares of partners were as follows:

Name	Share Percentage (%)
Deokinandan Jalan	17.19
Mohan Lal Jalan	17.19
Babulal Jalan	7.29
Shiv Bhagwan Jalan	6.77
Shanti Devi Jalan, widow of Keshabdeo Jalan	6.77
Nand Kishore Jalan	6.77
Chiranjilal Bajoria as Karta of a Mitakshara Hindu Undivided Family	21.87
Chiranjilal Bajoria	9.38
KishoriLal Jalan	6.77
TOTAL	100.00

3. Upon the death of the Late Mohan Lal Jalan, the petitioner's father-in-law Bajrang Prasad Jalan became entitled to a share in the firm. Bajrang Prasad Jalan died on 14 January 2015. Thereafter, his son Sandip Prasad Jalan husband of the petitioner expired on 15 July 2020. Upon the expiry of Sandip Prasad Jalan, the petitioner as legal representative had by a notice dated 8 September 2022, written to the firm and the remaining respondents seeking the annual accounts and the balance sheets of the respondent no.1 firm for the period March 2015 to March 2020. The failure to respond to the notice has given rise to a dispute. This was followed by a legal notice dated 9 January 2023 under section 21 of the Act. Hence, this application.
4. On behalf of the petitioner, it is contended that upon the death of her husband Late Sandeep Kumar Jalan, the petitioner as legal representative of Mohan Lal Jalan is entitled to maintain this

application. Admittedly, the firm continues to carry on business and was never dissolved. There is also nothing to demonstrate that the accounts between the parties have ever been settled. There is no question of limitation nor *locus standi* nor any other ground which warrants dismissal of the application. There is also no merit in the contention that the petitioner had given a go by to the arbitration agreement in the light of any prior suit or otherwise. In support of such contentions, the petitioner relies on *Manindra Kumar Boss v. Santi Rani Biswas* 1951 SCC OnLine Cal 164; *Yakub Ibrahim v. 1-A. Gulamabbas Mahomedali* 1957 SCC OnLine Bom 65; *Ravi Prakash Goel v. Chandra Prakash Goel* (2008) 13 SCC 667; *Chunduru Visalakshi vs. Chunduru Rajendra Prasad* (2022) SCC OnLine AP; *Crystal Transport Private Limited and Anr. vs. A Fathima Fareedunisa and Others* (2024) SCC OnLine SC 321 and *Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd.* (2025) 1 SCC 502.

5. On behalf of the respondent no.7, it is submitted that the instant application is not maintainable and is liable to be dismissed. The petitioner is not *eo-nomine* a party to the arbitration agreement and has no *locus* to invoke the same. There have been earlier suits being Suit No. 1886 of 1963 and Suit No. 290 of 1975 filed before this Court relating to the partnership firm *qua* accounts of the firm. Any attempt to re-agitate such issue is barred by the principles of *res judicata* and the same cannot be referred to by way of arbitration. In any event, the application is liable to be dismissed for non-joinder and mis-joinder of the parties. All the necessary partners from the respective groups have not been impleaded in the petition. Additionally, any cause of action is barred by limitation. In support of such contentions, reliance is placed on the decisions in *Ambika Charan Guha vs. Tarini Charan*

Chanda and others (1913) SCC OnLine Cal 138; Vyrathammal vs. Somasundaram Pillai and Ors. (1958) SCC OnLine Mad 293; Firdous Omer & Ors. vs. Bankim Chandra Daw (2006) 6 SCC 569; S.P. Misra v. Mohd. Laiquddin Khan, (2019) 10 SCC 329; Annapurna B. Uppin v. Malsiddappa, (2024) 8 SCC 700; Aslam Islam Khan Deshmukh vs. ASAP Fluids P. Ltd. & Anr. (2025) 1 SCC 502; Rahul Verma and Others vs. Rampat Lal Verma and Others (2025) SCC OnLine SC 578.

6. On behalf of the respondent no.17, it is submitted that the instant application is misconceived. The petitioner has no cause of action *qua* partner and cannot maintain any application in terms of the arbitration agreement dated 6 December 1943. Neither the respondent no.17 nor his father were partners of the firm and they are in no position to answer any claim in respect of the accounts. In support of such contentions, the respondent no.17 relies on *Annapurna B. Uppin vs. Malsiddappa (2024) 8 SCC 700*.
7. On behalf of the respondent nos.9, 10, 11, 19, 20, 22 and 27 it is submitted that the petitioner has been unable to establish any right on the death of Mohan Lal Jalan or Bajrang Prasad Jalan or Sandeep Kumar Jalan *vis-a-vis* the partnership firm. There is no arbitration agreement which exists between the petitioner and the respondent no.1. The petition is liable to be dismissed on the ground of non-joinder of parties. The institution of the suits in relation to the partnership firm itself suggests that the arbitration agreement if any was given a go-by by the partners of the said firm. Upon the said suits being dismissed, the petitioner cannot maintain any action in relation to the partnership firm.

8. For convenience, relevant sections of the Act are set out below:

2(1)(g)- “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

35. Finality of arbitral awards.—Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.

40. Arbitration agreement not to be discharged by death of party thereto.—(1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased. (2) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed. (3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

9. Salient clauses of the partnership deed dated 6 December 1943 are as follows:

4. That upon the death of any partner the partnership shall not be automatically dissolved but the surviving partners may admit the legal representative of the deceased unto the partnership by mutual consent.

6. In case of death of any partner or retirement during the continuance of the partnership shall be deemed to exist upto to the end of the accounting period of the year during which the death or retirement occurs and the estate of the deceased partner or the retiring partner shall be entitled to receive and be responsible for all profits and losses of the partnership up to the end of the accounting period as the case may be.

*7. This indenture further witnesseth that the said parties hereto hereby mutually covenant and agree that they will carry on the said business in partnership until; dissolution under and in accordance with the provisions and stipulation hereinbefore stated or contained in the said Indenture dated 1st day of September, 1938 so far as the same respectively are now subsisting and capable of taking and are applicable to the altered circumstances hereinabove appearing **And any dispute in relation to the said partnership shall be decided by Arbitration according to the provisions of the Indian Arbitration and for that purpose each of the disputing parties may nominate one Arbitrator** Provided however that none of the parties hereto shall at any time be entitled to apply to any Court of law for the dissolution of the partnership or for appointment of a Receiver over the partnership or any portion of its assets.*

10. It is now well settled that the jurisdiction which the Court exercises while hearing an application under section 11 of the Act is restricted. The section lays down a mechanism for appointment of an Arbitrator or Arbitrators while giving recognition to party autonomy. Ordinarily, at

this stage, the referral Court needs only to examine whether the arbitration agreement exists — nothing more, nothing less. This approach upholds the intention of the parties at the time of entering into the arbitration agreement to refer all disputes to arbitration. Thus, it is necessary to differentiate between the referral stage and issues which require a decision on merits by the Arbitral Tribunal. [*Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd. (2025) 1 SCC 502 @ Para 51, Arif Azim Co. Ltd. v. Aptech Ltd. 2024 SCC OnLine SC 215 @ Paras 65 and 77*].

11. Admittedly, by the partnership deed dated 6 December 1943 the firm stood reconstituted. A perusal of the relevant clauses of the deed of partnership would show that upon the death of any partner, the partnership was not to dissolve but rather the surviving partners may admit the legal representatives of the deceased into the partnership by mutual consent. Mohan Lal Jalan was admittedly a partner of the firm. Upon his death on 2 May 1982, his three sons Tolaram Jalan, Mahabir Prasad Jalan and Bajrang Jalan were entitled to be inducted in the firm. Bajrang Jalan died on 14 January 2015 leaving his son Sandeep Jalan who died intestate on 15 July 2020 leaving behind his wife, the petitioner, his three daughters and his mother Alka Jalan. These were his legal representatives. Alka Jalan, the respondent no.8 has since deceased. There is also a long standing Power of Attorney executed by all the daughters in favour of the petitioner. Accordingly, the petitioner as widow of Sandeep Kumar Jalan is a legal representative within the meaning of section 2(g) of the Act and is entitled to maintain this application. The accounts of the firm reflect that as on 31 March 2004, 2005 and 2006, the share of Mohan Lal Jalan was reflected as a separate and distinct entry in the

books of accounts of the respondent no.1 and the same have not been settled till date. In the meantime, the firm continues to carry on business.

12. There is nothing which the respondents have been able to demonstrate whereby the partnership agreement stood re-constituted upon the death of any of the partners post 1943. The 1943 partnership deed continues to bind the partnership firm till date. Despite the provisions of the Partnership Act 1932, the respondents have been unable to indicate that there has been any dissolution or settling of accounts or reconstitution which would disentitle the petitioner to claim rights *qua* legal representative of Sandeep Kumar Jalan or Bajrang Prasad Jalan or Mohan Lal Jalan.
13. Admittedly, Mohan Lal Jalan was a partner of the firm and had a share in the partnership firm. The partnership firm has enjoyed the money of Mohan Lal Jalan's estate and is liable to account for the same. Since the partnership firm has neither been dissolved nor reconstituted nor the accounts settled, there is no question of this application being barred by limitation. In any event, non-settling of accounts is a continuous breach by the respondents and this question would ultimately be decided by the Arbitral Tribunal. Limitation being a mixed question of fact and law lies exclusively within the domain of the Arbitral Tribunal. This is not the stage to hold a mini-trial or go into the intricacies of evidence. [*BSNL v. Nortel Networks (India) (P) Ltd.* (2021) 5 SCC 738].
14. On a combined reading of section 2(1)(g) read with section 40 of the Act, the petitioner as legal representative after the death of a partner is entitled to enforce the arbitration agreement and sue as part of the estate (*Rahul Verma and Ors. Rampat Lal Verma and Ors* 2025 SCC OnLine SC 578 Para 10). In

Ravi Prakash Goel vs. Chandra Prakash Goel & Anr. (2008) 13 SCC 667, it has been held as follows:

18. It is clear from Section 40 of the Arbitration Act that an arbitration agreement is not discharged by the death of any party thereto and on such death it is enforceable by or against the legal representatives of the deceased, nor is the authority of the arbitrator revoked by the death of the party appointing him, subject to the operation of any law by virtue of which the death of a person extinguishes the right of action of that person.

15. On a plain reading of section 35 of the Act, it is categorically provided that an arbitration agreement is binding on the parties and persons claiming under it which include the legal representative of parties to the arbitration agreement. Death does not discharge an arbitration agreement and it can be enforced by or against the legal representatives. Even though the petitioner is not *eo nomine* a party to the agreement, the right which is sought to be enforced is *qua* legal representative of a deceased partner and this satisfies the limited scope of enquiry at this stage of the proceeding. [*Jafri Begam v. Saira Bibi*, ILR (1900) 22 All 367, *D. Padmaraja Setty v. Gyanachandrappa* AIR 1970 Mys 87 @ Para 10 and *Manindra Kumar Boss v. Santi Rani Biswas* AIR 1951 Cal 518].
16. Insofar as the question of mis-joinder and non-joinder of parties is concerned, this cannot be a ground to dismiss the application. Ultimately, whether or not the petitioner would be entitled to the final reliefs on merits cannot be adjudicated upon at this stage of the proceeding. In any event, the application cannot fail on this ground and the risk if any, is one which the petitioner chooses to run. Significantly, the petitioner has been kept in the dark as to who are the existing members of the firm. This fact has not been disclosed by any of the respondents. In this context, the decisions in *Yakub*

Ibrahim v. 1-A. Gulamabbas Mahomedali AIR 1958 Bom 51, Vyrathammal v. Somasundaram Pillai AIR 1960 Mad 134, Ambika Charan Guha vs. Tarini Charan Chanda and Ors. AIR 1914 Cal 132 and Hanif Azami Eliyas Azami v. Shabana Mohsin Ghaz 2006 6 SCC 566 are all inapposite. These decisions do not deal with the scope of a petition under section 11 of the Act. In all these cases, mis-joinder or non-joinder of a party though an issue was crucial only at the final hearing of the suit. The decisions relied on by the respondent no.17 in *S.P. Misra v. Mohd. Laiquddin Khan 2019 10 SCC 329* and *Annapurna B. Uppin v. Malsiddappa 2024 8 SCC 700* are also inapplicable. In *S.P. Misra v. Mohd. Laiquddin Khan (Supra)* the question involved related to the executability of the decree of dissolution of the partnership and the legal effect of seeking dissolution of a partnership. The decision rendered in *Annapurna B. Uppin v. Malsiddappa 2024 8 SCC 700* involved the provisions of the Consumer Protection Act, 1986 and whether liability had devolved on a particular person or not. This decision is also inapplicable in the facts of this case.

17. The question of whether the claim is barred by res judicata also cannot arise at this stage of the proceeding. It is axiomatic that a plea of res judicata requires consideration of the pleadings as also the rival points raised by the parties. Such an issue needs examination by the Arbitral Tribunal. As such, there is no scope of deciding this issue of at this stage of the proceeding.
18. The other contention on behalf of the respondents that the arbitration clause has been waived and given a go by is also liable to be rejected. This objection is without merit. There is nothing which has been relied on by the respondents which constitutes waiver or estoppel or conscious abandonment.

None of the suits were instituted by Mohan Lal Jalan or any of the members of his group. In such circumstances, there can be no question of waiver or abandonment foreclosing the right of the petitioner to invoke the arbitration clause.

19. Ordinarily, once there exists an arbitration clause and a party has raised an arbitrable dispute, there is very little which remains for the referral Court. In view of the above, AP-COM/363/2024 stands allowed. The appointment mechanism having failed under the arbitration clause, as a “necessary measure” under section 11(6) of the Act, the Hon’ble Mr. Bhaskar Bhattacharya (Retired), Chief Justice of Gujarat High Court is appointed as Sole Arbitrator, subject to the Arbitrator communicating his consent to the Registrar, Original Side of this Court within three weeks from date of communication of this order. [*Sethi Constructions vs. Kolkata West International City Private Limited* 2014 SCC OnLine Cal 12927 and *North Eastern Railway v. Tripple Engg. Works*, (2014) 9 SCC 288]. The Advocate on Record of the petitioner shall communicate this order to the Arbitrators forthwith and positively within 10 days from the date of passing of this order.

20. With the above directions, AP-COM/363/2024 stands disposed of.

(Ravi Krishan Kapur, J.)