

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.47 OF 2025

Ramesh Poonamchand Jain	Petitioner
Versus	
Manish Nandkumar Varne	Respondent

Appearance not received.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 22, 2025

PC :

1. This Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) seeking appointment of an arbitrator in connection with disputes and differences arising out of an Agreement dated October 27, 1986 (***“Agreement”***). The arbitration agreement is contained in Clause 18 (found at Page 34 of the Petition). In the interest of brevity, the same is not reproduced here. Suffice it to say that the matter falls within the jurisdiction of this Court.

2. The fundamental objection from the Respondent is that the claims are hopelessly barred by limitation. Learned Counsel for the Respondent submits that the disputes and differences relate to events as old as 2009-10, as seen in Paragraph 8 of the Petition, which points

to a suit with a third party by the Partnership Firm which is of the year 2010. Learned Counsel for the Petitioner submits that tax returns of 2009-10 up to 2018-19 have been examined by him, which have given rise to knowledge of other facts which has entitled him to invoke arbitration under the Partnership Deed to which both parties are signatories.

3. It is also noticed that Petition under Section 9 of the Act has been filed before the District Judge in Pune and some interim reliefs have been obtained by the Petitioner in those proceedings.

4. In these circumstances, it would be in the interest of justice to ensure that the parties commence arbitration proceedings forthwith so that, even if the Respondent's objections are corrected, namely, the claims are hopelessly barred by limitation, the interim reliefs already issued under Section 9 would be capable of being vacated, should the arbitral tribunal answer the question of limitation. Since this is a Partnership Firm and the disputes are between the partners of the firms in respect of the affairs of the firm, whether it is barred by limitation may pose a mixed question of fact and law, which may require the arbitral tribunal to appreciate evidence.

5. The scope of review under Section 11 is explicitly set out in Section 11(6A) of the Act. It is now trite law, with particular regard to

the decisions of a seven-judge bench in the *Interplay Judgement*¹ followed by multiple others, including *SBI General*² and *Patel*³ that the Section 11 Court ought not to venture beyond examining the existence of a validly existing arbitration agreement that has been formally executed. Even questions of existential substance is a matter that falls squarely in the domain of the arbitral tribunal, in view of Section 16 of the Act.

6. Consequently, being satisfied about the existence of the arbitration agreement not being made out and the only issue being one of limitation, it would be appropriate for the arbitral tribunal to deal with the issue of limitation at the threshold and towards this end, the Respondent may make an application under Section 16 of the Act.

7. At this stage, Learned Counsel for the parties jointly submit that they are willing to proceed to arbitration before a sole arbitrator instead of proceeding to arbitration by a three member arbitral tribunal as set out in the agreement between them.

8. With the aforesaid observations, this Petition is hereby ***finally disposed of***, in terms of the following order:

¹ *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899 – (2024) 6 SCC 1*

² *SBI General Insurance Co. Ltd. v. Krish Spinning – 2024 SCC OnLine SC 1754*

³ *Ajay Madhusudan Patel v. Jyotindra S. Patel – 2024 SCC OnLine SC 2597*

A] Mr. Dormaan Dalal, a Learned Advocate of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above.

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from the date on which this order is uploaded on the website of this Court;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration and;

E] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

9. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

10. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]