

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 17003 OF 2025

Jayesh Purshottambhai Patel & Ors ..Petitioners
Versus
Bharat Mithalal Nagori & Ors ...Respondents

Mr. Sugandh B Deshmukh, with Irvin D'Souza, Vaibhav Thorve,
Aniket Kanawade, Aryan Deshmukh, Karishma Shinde and
Bhushan Deshmukh, for the Petitioner.

Mr. Karl Tamboly, with Anuj Desai, i/b Pankaj Das, for Respondent
No.1.

Mr. Aman Vijay Dutta, with Vinayak Pandit, with Hitanshi Patil, for
Respondent No.2.

CORAM: N. J. JAMADAR, J.

DATE : 15th DECEMBER 2025

ORDER:

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 29th October 2025 passed by the learned Arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996 ("the Act, 1996") whereby an Application preferred by the Petitioners-Respondents under Section 16 of the Act, 1996 questioning the jurisdiction of the learned Arbitrator came to be dismissed.
3. The Petitioners along with the other partners entered into a Partnership Agreement on 3rd May 2005 to run a business of development of real estate, construction of buildings, builders and promoters in general under the name and style of "M/s Mahanagar

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Estates. The Partnership Deed contained an Arbitration Clause. The Respondent No.1 was one of the partners. The Respondent No.1 has invoked the Arbitration, on the strength of a notice dated 13th October 2023 seeking dissolution of the Firm with effect from 31st October 2023.

4. In the Arbitration proceedings, the Petitioners filed an Application purportedly under Section 16 for termination of the Arbitration proceeding, which came to be rejected by the impugned order.

5. Mr. Sugandh Deshmukh, the learned Counsel for the Petitioners would submit that the firm stood dissolved in the year 2014 itself pursuant to the notice dated 19th September 2014 served by the Respondent No.1-Claimant on the other partners. Since the partnership was at Will, the partnership stood dissolved upon the service of notice under the provisions of Section 43 of the Indian Partnership Act, 1932. Therefore, the Arbitration proceeding was clearly untenable on the basis of the subsequent notice dated 13th October 2023.

6. The learned Arbitrator noted that the material on record indicates that parties had not acted upon the earlier notice dated 19th September 2014 and the Claimant continued to be a partner of the said Firm. A reference was made to the material which the Claimant had placed on record to demonstrate that the said notice dated 19th September 2024 was not acted upon and the Claimant continued to be an active partner of the firm and looked after the affairs of the firm.

7. Under the provisions of Section 16 of the Act, 1996, an Arbitrator is empowered to decide the question of his own jurisdiction. If the Arbitrator accepts the challenge to the jurisdiction, an Appeal is provided under Section 37 of the Act, 1996. In the event the Arbitrator rejects the jurisdictional challenge, the Arbitrator has to proceed with the Arbitration and pass an Award. The remedy of the aggrieved party is to challenge the award under Section 34 of the Act, 1996.

8. The minimum judicial intervention is underscored by incorporating a non-obstante clause in Section 5 of the Act, 1996. In view of the pronouncements of the Supreme Court in the cases of **Deed Industries Limited Vs Oil And Natural Gas Corporation Limited**¹ and **Bhaven Construction Through Authorised Signatory Premjibhai K. Shah Vs Executive Engineer, Sardar Sarovar Narmada Nigam Limited & Anr**,² it is well-recognized that the jurisdiction to interfere with the arbitral process needs to be exercised in exceptional rarity, where one party is left remediless under the statute or a clear “bad faith” is shown by one of the parties.

9. The challenge in this Petition is rooted in facts. Whether the notice dated 19th September 2014 was acted upon or waived of and the parties continued to carry on the business in partnership, would a matter to be adjudicated upon appraisal of facts. Thus, the challenge is,

1 (2020) 15 SCC 706.

2 (2022) 1 SCC 75.

in a sense, to the admissibility of the claim and not a jurisdictional challenge.

10. In the case of **Bharat Sanchar Nigam Limited And Anr Vs Nortel Networks India Private Limited**³ pointing out the distinction between the jurisdictional and admissibility issues, the Supreme Court enunciated that there is an essential distinction between the jurisdictional and admissibility issues. An issue of “jurisdiction” pertains to the power and authority of the arbitrators to hear and decide a case. In contrast an admissibility issue is not a challenge to the jurisdiction of the Arbitrator to decide the claim. For instance, a challenge that a claim is time-barred, or prohibited until some precondition is fulfilled, is a challenge to the admissibility of that claim, and not a challenge to the jurisdiction of the Arbitrator to decide the claim itself.

11. In view of the above position in law, this Court does not find that the Petitioners have succeeded in making out a case of exceptional rarity.

12. Resultatnly, interference with the arbitral proceeding is not warranted.

13. The Petition thus stands dismissed.

[N. J. JAMADAR, J.]

3 (2021) 5 SCC 738.