

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 53 OF 2025

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DARSHAN MAHENDRA NIBJYA

....Petitioner

Versus

JAYANTILAL TARACHAND OSWAL & Ors.

....Respondents

Mr. Sanket Bora a/w. *Vidhi Punmiya, Amiya R. Das, and Unnatii Thakkar i/b SPCM Legal, for Petitioner.*

Mr. Dhruva Gandhi i/b *Ms. Prakruti Joshi, for Respondent No. 2.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : February 24, 2025

Oral Judgement:

1. This is a Petition under Section 11 of the Arbitration and Conciliation Act, 1996 ("***the Act***"), which has been filed in rather piquant circumstances.

2. By an order dated August 7, 2023, in view of the two arbitrators nominated by the Petitioner and Respondent No.1 not being able to agree upon a presiding arbitrator, a Learned Single Judge of this Court was pleased to appoint a Retired Judge of this Court as a presiding arbitrator. The order passed under Section 11 of the Act was challenged by Respondent No. 1

before the Supreme Court, which eventually, by an order dated April 8, 2024, dismissed the challenge stating that there was no reason to interfere, since eminently, the arbitration agreement had been appropriately considered by the Learned Single Judge.

3. Respondent No. 2 is now a partner of the firm, in which the Petitioner was once upon a time, a partner. In fact, the disputes and differences between the parties centre around the exit of the Petitioner from the same firm. Two partnership deeds, identical in their terms, varying only in date form part of the record. The arbitral tribunal is seized of all these proceedings. It is a matter of record that Respondent No. 2 has taken out an application under Section 16 of the Act, stating that at the same time as when the Petitioner was a partner of the firm, Respondent No. 2 was not a partner of that firm, and that consequently, there has been no forwarding of the baton of the arbitration agreement, linking the Petitioner to Respondent No. 2 under the arbitration agreement.

4. Consequently, he would submit that he would be entitled to raise this issue during the course of these proceedings too, and object to appointment of the substitute presiding arbitrator, for which this application has been taken out. The presiding arbitrator who was appointed by a Learned Single Judge of this Court on August 7, 2023, and came to be confirmed by the

Supreme Court, resigned from the proceedings on January 16, 2025, after allegations were levelled by Respondent No. 2 against the presiding arbitrator.

5. Today, it is Respondent No. 2 that is objecting to this application being allowed, this time on the premise that the existence of an arbitration agreement between the Petitioner and Respondent No. 2 is in doubt, and the arbitration agreement that Respondent No. 2 is a party to, is an agreement between Respondent No. 1 and Respondent No. 2.

6. Even a plain reading of the record would show that the partnership firm was not dissolved. The partnership firm continued. The arbitration agreement is a clause contained in the partnership deed. At one point of time in the life of the partnership firm, the Petitioner and Respondent No. 1 were partners. At another point in time, the firm continued with Respondent No. 1 and Respondent No. 2 being partners. A partnership firm does not have an existence independent of its partners. What liabilities an incoming partner would have in respect of dues already incurred by a partnership firm with unlimited liability, is a matter of evidence that the arbitral tribunal alone can consider. The implications of being a partner at a subsequent period of time, may or may not make such subsequent partner, a necessary party. That

question to is entirely in the domain of the Learned Arbitral Tribunal, to deal with whether or not Respondent No. 2 is a necessary party in the disputes between the Petitioner and Respondent No. 1. It would be totally inappropriate for this Court to delve deep into such matters of fact, which will necessarily involve intrusion into matters of evidence, which are wholly outside the jurisdiction of a Court under Section 11 the Act.

7. Learned Counsel for Respondent No. 2 submits a judgment of the Supreme Court in Magic Eye Developers Pvt. Ltd. Vs. M/s. Green Edge Infrastructure Pvt. Ltd.¹ to suggest that the Section 11 Court must make an inquiry into the privity of parties to the agreement. The law declared in the aforesaid judgment has been comprehensively overtaken by subsequent judgements of Larger Benches of the Supreme Court. The law governing the scope of jurisdiction on the Section 11 Court is now well settled. 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***² followed by multiple others, including ***SBI General***³ and ***Patel***⁴ that the Section 11 Court ought not to venture beyond examining the existence of a validly existing arbitration agreement that has

¹[2023] 5 S.C.R. 407

² *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899 – (2024) 6 SCC 1*

³ *SBI General Insurance Co. Ltd. v. Krish Spinning – 2024 SCC OnLine SC 1754*

⁴ *Ajay Madhusudan Patel v. Jyotrindra S. Patel – 2024 SCC OnLine SC 2597*

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.

8. It is not for the Section 11 Court to sit in judgment about privity of parties in a complex situation where partners enter and exit a continuing partnership firm. It is equally noteworthy that Respondent No. 2 has already taken out an application under Section 16 of the Act and the arbitral tribunal is seized of this very issue. That apart, it is the allegations levelled by Respondent No. 2 against the Presiding Arbitrator whose very appointment was fought all the way to the Supreme Court, that appears to have led to the Presiding Arbitrator having resigned. In any case, the Learned Arbitral Tribunal will deal with the Section 16 Application already pending before it.

9. With the aforesaid directions, this application is *finally disposed of* in the following terms :

A] Smt. Justice R.P. Sondurbaldota (Retd.), High Court Judge 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 Petitioner within a period of one week from the date on which this order is uploaded on the website of this Court. The Petitioner 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 receipt of a copy of this Order;

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;

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.

10. 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.

11. Although initially, I was not inclined to impose costs, taking into account the history of the journey of these proceedings, it would be inappropriate not to take note of the trenchant approach of Respondent No. 2 to the proceedings and deal with it. Costs shall follow in the sum of Rs. 25,000 payable by Respondent No. 2 to the Petitioner, no later than two weeks from the date on which this order is uploaded on the website of this Court.

12. 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.]