
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.336 OF 2024

Kavita Ramesh Shetty & Anr.Applicants

Versus

Shashikala Shankar PunjaRespondent

Mr. Prashant Kulkarni a/w. *Rachna Mamnani i/b. Vaibhav Chaudhari, Advocates for Applicants.*

Mr. Sanjeev Singh i/b. *Ritesh Singh, Advocate for Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 26, 2025

ORDER :

1. This Application 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 that are said to have arisen between the parties under a Partnership Agreement dated January 19, 1998 (*"Agreement"*). The arbitration agreement is contained in Clause 23 (found at Page No.30 of the Application) of the Agreement. In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. The invocation of arbitration has been made on September 02, 2024, among others, calling for dissolution of the Partnership Firm and Sale of the Premises jointly owned by the partners in which the business of the Partnership Firm was conducted.

3. Learned Counsel for the Respondent submits that this is a case where the Applicants are hopelessly time-barred, not only in terms of the cause of action, but also in terms of the Application not being filed within three years of invocation. According to him, the real invocation of arbitration took place on November 26, 2011, by which the Applicants had invoked arbitration and then did not follow it through. The said purported invocation is annexed at Exhibit - 'C' (Page 185) and forms part of the Reply of the Respondent.

4. Upon examination of the same and comparison with the invocation purported to be made on September 2, 2024, *prima facie* it can be said that the invocation of 2024 relates to disputes and differences about the proposal to sell the property jointly owned by the partners and dissolving the Partnership Firm while the 2011 invocation notice reveals that it does not deal with any proposal to sell the property jointly owned by the partners or about dissolution of the firm.

5. Learned Counsel for the Respondent would submit that it should not be assumed that the property jointly owned by the partners

necessarily belongs to the Firm. However, it is apparent that the three partners are not related by blood, and that they jointly acquired the property in which the business of the firm has been carried out. The Agreement relates to the business that has been carried out from such premises. Therefore, *prima facie* the purchase of the property could well be for purposes of the business under dispute. In any case, it is clear that this is a matter of merits which must be gone into by the arbitral tribunal. The property in which the business of the partnership was being carried out is jointly owned by the parties and disputes appear to be about selling that property, in order to wrap up the relations between the parties and towards dissolving the partnership.

6. No useful purpose would be served keeping this matter pending any further having seen that the arbitration agreement exists.

7. Learned Counsel for the Respondent also submits that his client is unaware of whether the Agreement annexed to the Application is indeed the Partnership Deed signed by his clients. When asked for the Partnership Deed that his clients have signed, he would submit that he has instructions to state that they do not have a copy of the same. Consequently, such submission does not inspire confidence for holding up this Application any further. In any case, this squarely falls in the

realm of speculation and cannot detract from the finding that a formally valid and executed arbitration agreement is in existence.

8. 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.

9. Being satisfied that an arbitration agreement is validly in existence, and that arbitration has been duly invoked, it is in the fitness of things to refer the disputes and differences between the parties in connection with the aforesaid agreement dated January 19, 1998, to arbitration by a Sole Arbitrator.

10. In these circumstances, this Application is hereby ***finally disposed of***, in terms of the following order:

A] Mr. Udayan Shah, 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

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. Jyotrindra S. Patel – 2024 SCC OnLine SC 2597*

of and in connection with the Agreement referred to above;

Office Address:- 9B, Samata Building,
JB Marg, Mantralay,
Mumbai-400 021

Email ID :- Udayan.sh@gmail.com

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 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.

11. 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.

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.]