



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Misc. Civil Application (MCA) No. 136 of 2025

Mohan Murli S/o Maghanmal Amesar
Versus
Shri Bhagwandas S/o Maghanmal Amesar

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order
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Shri Arjun Raoka, Advocate for the applicant.
Shri Pushkar Ghare, Advocate for the non-applicant.

CORAM : NIVEDITA P. MEHTA, J.

Reserved on : 13th October, 2025.

Pronounced on : 17th October, 2025.

The applicant has filed the present application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act, 1996”) seeking appointment of an arbitrator to resolve the dispute between the parties.

2. The facts of the case are that a partnership deed was executed between the applicant and the non-applicant, who is the elder brother of the applicant. The said partnership firm, M/s Amesar and Co., commenced its business with effect from 24.04.2006, dealing in all types of gram, kirana, and other agricultural produce on a wholesale basis. It is further submitted that the said partnership was a partnership at will and there was no fixed duration for its continuation.

3. On 01.04.2009, disputes arose between the partners, which were amicably resolved by way of a Compromise Deed dated 01.04.2009. Under the terms of the said amicable settlement, the non-applicant voluntarily retired from the partnership firm, and the accounts were accordingly settled. A total sum of Rs. 15,00,000/- was paid to the non-applicant towards his retirement.

4. It was further agreed that M/s Amesar and Co. would continue to carry on its business under the sole proprietorship of Shri Mohan Murli, S/o Maghanmal Amesar (the applicant herein), who would pay the entire sale consideration of Rs. 16,29,000/- for the shop premises. It was agreed that the sale deed would be executed by Shri Bhagwandas Maghanmal Amesar (non-applicant) in favour of the applicant on or before 30.06.2009, free from all encumbrances, charges, and liens.

5. In pursuance of the said agreement, a sum of Rs. 3,00,000/- was paid by the applicant on 25.04.2009. The remaining balance of Rs. 13,29,000/- was to be paid at the time of execution of the sale deed. However, the non-applicant failed to execute the sale deed on 30.06.2009 despite the applicant being ready and willing to pay the balance amount. On the request of the non-applicant, the applicant waited for a further period of one month, considering the familial relationship. Despite this, the non-applicant failed to execute the sale deed and, instead, attempted to sell the shop premises to third parties and also tried to forcibly take

possession by placing his own lock on the shop. However, due to the timely intervention by the applicant, the said attempt did not succeed.

6. As per Clause 16 of the Partnership Deed, any disputes arising between the parties were to be referred to arbitration. Accordingly, by order dated 19.10.2012 passed by this Court, Shri Arun Patil, Advocate, was appointed as the Arbitrator to resolve the disputes between the applicant and the non-applicant, by invoking Clause 16 of the partnership deed.

7. Pursuant to the appointment, the learned Arbitrator first adjudicated the preliminary issue regarding the maintainability of the arbitration proceedings and held that the subject matter of the dispute fell within the scope of the arbitration clause and was thus arbitrable. Thereafter, the applicant submitted his evidence by way of an affidavit. However, the learned Arbitrator, in the course of proceedings, recorded that the applicant failed to offer himself for cross-examination. It is pertinent to note that the matter was never specifically posted for the cross-examination of the applicant, nor was any order passed summoning the applicant for the said purpose.

8. Subsequently, the matter was adjourned on several occasions for various reasons, but the proceedings were not conducted in accordance with the procedure prescribed under the Act, 1996. Despite the pendency of evidence and absence of a clear

procedural framework for conclusion of the trial, the learned Arbitrator proceeded to pass an award dated 12.01.2019 in Arbitration Petition No. 1/2010, whereby the applicant's claim was rejected and the applicant was further directed to bear costs amounting to Rs. 1,00,000/-.

9. The said arbitral award was challenged by the applicant before the learned District Judge, Nagpur, under Section 34 of the Act, 1996. The learned District Judge, Nagpur, by order dated 30.08.2024, set aside the award on the ground that, under Section 25(c) of the Act, 1996, if a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may proceed with the matter and make an award on the basis of the available evidence. The learned Arbitrator, however, failed to proceed in accordance with Section 25(c) and erroneously discarded the affidavit evidence filed by the applicant without deciding the matter on merits. The award was held to be in conflict with the public policy of India and was accordingly set aside.

10. In view of the setting aside of the arbitral award dated 12.01.2019 by the learned District Judge, the applicant has now filed the present application under Section 11(6) of the Act, 1996, seeking appointment of a fresh arbitrator to adjudicate the dispute between the parties.

11. Learned counsel for the applicant submitted that the learned Arbitrator failed to conduct the arbitration proceedings in

accordance with the provisions of the Act, 1996. It is contended that the applicant had duly filed his statement of claim, supporting documents, and affidavit of evidence before the learned Arbitrator. However, despite the availability of such material on record, the learned Arbitrator did not adjudicate the dispute on merits as required under Section 25 of the Act, 1996.

12. Learned counsel further submitted that the learned Arbitrator erroneously rejected the applicant's claim solely on the ground that the applicant did not remain present for cross-examination. It was argued that the proceedings were never scheduled for cross-examination, and no order was passed to that effect. Therefore, the rejection of the claim on this ground alone amounts to procedural impropriety and denial of fair hearing. In support of his submissions, learned counsel for the applicant relied upon the following decisions:

Associated Constructions v. Mormugao Port Trust, reported in 2010(5) MhLJ 739; *Kirloskar Pneumatic Company Limited v. Kataria Sales Corporation*, reported in 2024 SCC OnLine Bom 941; and *K.R. Traders v. Union of India*, reported in 2022 SCC OnLine Bom 11762.

13. Per contra, learned counsel for the non-applicant submitted that the present application under Section 11(6) of the Act, 1996 is not maintainable in the absence of prior issuance of a legal notice invoking the arbitration clause. It is contended that before approaching this Court for appointment of an arbitrator, it was

incumbent upon the applicant to comply with the procedural requirements under the Act, particularly by issuing a notice invoking the arbitration clause and calling upon the other party to concur in the appointment of an arbitrator.

14. While the existence of an arbitration clause is not disputed by the non-applicant, it is submitted that the applicant has failed to adhere to the mandatory pre-requisites before invoking the jurisdiction of this Court under Section 11(6) of the Act. The objection raised pertains not to the arbitrability of the dispute, but to the procedural lapse in approaching the Court prematurely, without exhausting the statutory process. The arbitration clause between the parties is not in dispute. The respondent contends that the arbitral award was set aside by the learned trial Court on the ground that the procedure contemplated under the Act, 1996 was not duly followed. The respondent has further raised a preliminary objection to the maintainability of the present application under Section 11 of the Act, 1996 asserting that in view of Section 21 a fresh notice invoking arbitration ought to have been issued by the applicant prior to seeking appointment of an arbitrator afresh. According to the respondent, in the absence of such a notice, the application is premature and not maintainable. In support of these submissions, reliance was placed on the following judgments:

Arif Azim Company Limited v. Aptech Limited, reported in 2024(5) SCC 313; and *M/s D.P. Construction v. M/s Vishvaraj*

Environment Pvt. Ltd., decided on 06.07.2022 in Misc. Civil Application (Arbn) No. 31 of 2021.

15. I have carefully considered the submissions advanced by the learned counsel for the applicant and the learned counsel for the non-applicant. I have also perused the relevant documents placed on record as well as the judgments cited by both parties.

16. The central issue that arises for consideration in the present application is whether a fresh appointment of an arbitrator under Section 11(6) of the Act, 1996, is warranted in light of the arbitral award dated 12.01.2019 having been set aside by the learned District Judge, Nagpur, by order dated 30.08.2024.

17. It is not in dispute that the parties had entered into a partnership deed containing an arbitration clause (Clause 16), and that disputes had arisen inter se which were referred to arbitration by an earlier order of this Court dated 19.10.2012, whereby Shri Arun Patil, Advocate, was appointed as the sole Arbitrator.

18. The applicant filed his statement of claim, supporting documents, and evidence by way of affidavit. The learned Arbitrator, after deciding the preliminary issue regarding maintainability, proceeded with the matter but ultimately rejected the applicant's claim solely on the ground that the applicant failed to offer himself for cross-examination. However, it is the specific case of the applicant that the matter was never posted for cross-

examination, nor was any direction issued by the Arbitrator in this regard. This aspect was appreciated by the learned District Judge in proceedings under Section 34, who found that the Arbitrator failed to follow the procedure contemplated under Section 25(c) of the Act, 1996, which provides that in case a party fails to appear or produce evidence, the tribunal may proceed and make the award on the basis of the evidence available on record.

19. It is pertinent to note that arbitration proceedings are intended to be less formal and more flexible, but they must nonetheless adhere to the principles of natural justice and the procedure established under the Act. Section 25(c) specifically empowers the Arbitral Tribunal to continue proceedings and make an award even in the absence of participation of one of the parties, provided sufficient material is on record. In the instant case, the Arbitrator had the applicant's affidavit and documentary evidence but rejected the claim without evaluation on merits, thus violating the mandate of Section 25(c).

20. The judgment cited by the learned counsel for the applicant, particularly in *Kirloskar Pneumatic Co. Ltd. v. Kataria Sales Corporation* [2024 SCC OnLine Bom 941], reiterates the principle that failure to permit a party to lead or rely on uncontroverted evidence, or to decide the matter without addressing the material on record, amounts to procedural irregularity and warrants setting aside of the award. Similarly, *Associated Constructions v. Mormugao Port Trust*, 2010 (5) MhLJ 739,

recognizes the importance of adjudication on merits, particularly when sufficient material has been placed before the tribunal.

21. As regards the objection raised by the non-applicant regarding maintainability of the present application under Section 11(6) of the Act, 1996, it is to be noted that the requirement of issuing a notice invoking the arbitration clause applies where arbitration is sought for the first time. In the present case, the arbitration clause had already been invoked, an arbitrator was appointed pursuant to judicial order, proceedings were conducted, and an award was passed, which was subsequently set aside by a competent Court. In this context section 21 of the Act reads thus:

"Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

Therefore, the question of issuing a fresh notice under Section 21 of the Act does not arise. The legislative intent behind Section 21 is to mark the commencement of arbitral proceedings for the purpose of limitation as well as to provide procedural clarity. The respondent argues that, following the setting aside of the arbitral award, any further proceedings would amount to a fresh initiation of arbitration, thereby requiring the applicant to issue a fresh notice invoking arbitration. Once the award has been set aside, the logical consequence is revival of the dispute, and a fresh appointment under Section 11(6) is permissible. The objection raised by the non-applicant is thus without merit.

22. However, it is pertinent to consider whether the earlier invocation of arbitration which had led to the constitution of an arbitral tribunal and pronouncement of an award loses its efficacy entirely upon the award being set aside. Judicial precedents have indicated that once an award is set aside under Section 34, the arbitration clause revives, and the parties are at liberty to reinitiate arbitration unless barred by limitation or other legal impediments. In *NBCC (India) Ltd. v. Zillion Infraprojects (P) Ltd.*, 2022 SCC OnLine Del 1774, the Delhi High Court observed that a fresh notice under Section 21 may not be necessary in every case where the award has been set aside, particularly where the arbitration clause subsists and the dispute remains unresolved. That said, the requirement of a fresh notice may be viewed differently depending on the facts of the case. Where the arbitral award is set aside due to procedural infirmities (e.g., violation of natural justice or failure to follow the agreed procedure), and not on merits, some courts have emphasized the need for re-invocation to ensure compliance with due process and procedural fairness.

23. A fresh notice may not be required if original arbitration proceedings were validly initiated. As in such case the proceedings already initiated and original arbitration can be recommenced.

24. The Court has to consider if initial procedural failure (which led to the award being set aside) was due to lack of proper notice to other side under section 34(2) (a) (ii). Thus in case if the setting aside was a direct result of lack of notice, then a fresh notice would be critical for new arbitrator.

25. A pragmatic approach needs to be adopted. Arbitration earlier, was duly initiated. The non-applicant took part in arbitration proceedings. Award was set aside on the ground other than legality and/or requirement of notice. Therefore, asking the applicant to issue fresh notice in the facts and circumstances of the case, would defeat the purpose of the Act, which is to avoid unnecessary delays and swift disposal of arbitrable disputes.

26. The decisions cited by the non-applicant, including *Arif Azim Co. Ltd. v. Aptech Ltd., 2024 (5) SCC 313*, are distinguishable on facts. Those decisions deal with pre-reference procedural non-compliance, whereas the present case pertains to a post-award situation where the award has already been annulled by the competent court.

In view of the above discussion, this Court is of the opinion that the applicant is entitled to seek a fresh reference of the dispute to arbitration under Section 11(6) of the Act, 1996. The prior arbitral award having been set aside, the arbitration clause stands revived, and a fresh appointment is necessary to adjudicate the dispute afresh on merits, without issuance of fresh notice for appointment of Arbitrator.

[NIVEDITA P. MEHTA, J.]