



ARB-539-2024

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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ARB-539-2024

Date of Decision: 30.07.2025

Bhoop Singh

...Applicant

Versus

Virender Singh and another

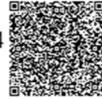
...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Deepak Girotra, Advocate for the applicant
Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Akash Vashisth, Advocate and
Mr. Abhishek Shukla, Advocate for the respondents

JAGMOHAN BANSAL, J. (Oral)

1. Through instant application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short '**1996 Act**'), the applicant is seeking appointment of an Arbitrator.
2. The parties executed partnership deed dated 16.04.2004 (Annexure A-1). A dispute erupted between the parties. The applicant served notice upon the respondents seeking resolution of dispute through Arbitral Tribunal but to no avail.
3. Learned Senior counsel for the respondents submits that the applicant with respect to same cause of action, on an earlier occasion, approached Civil Court which vide judgment dated 23.02.2011 rejected his claim. He preferred appeal before the Appellate Court which was dismissed. He further preferred suit seeking rendition of accounts which was withdrawn



on 06.02.2014. After availing these remedies, the applicant invoked arbitration clause. The claim of the applicant is hit by doctrine of *res judicata* as well as limitation. As per said clause two persons named in the partnership deed could be appointed as Arbitrators. The matter was referred to those Arbitrators and they, at their own, appointed an Umpire. An award was passed by the Umpire. The said award has been set aside in execution proceedings by this Court vide judgment dated 29.05.2024.

4. Learned counsel for the applicant submits that at the initial stage, two persons named in the partnership deed were appointed as Arbitrators. The respondent appeared before the Arbitrators and raised question of independence. In such circumstances, an Umpire was appointed and award was passed. There was no objection before the Arbitrators with respect to maintainability. Clause 6 of the partnership deed is an arbitration clause. The matter relates to retail outlet of Bharat Petroleum Corporation. The said retail outlet is still in operation, thus, there is recurring cause. The applicant has rightly invoked jurisdiction of this Court despite dismissal of civil suit.

5. From the perusal of partnership deed dated 16.04.2004, it is evident that the parties have agreed to refer the dispute to Mr. Maninder Singh, Advocate and Mr. Nawal Singh, Advocate. The matter could not be resolved through appointment of those Arbitrators, thus, this Court under Section 11(6) can make appointment. The contention of respondent that there was no arbitration agreement is misconceived.

6. The applicant concededly approached Civil Court raising the issue involved herein. The Civil Court has not dismissed suit on the ground



of availability of remedy of arbitration. The suit was dismissed on merits. The appeal against the judgment of Civil Court was also dismissed. The applicant filed suit seeking rendition of accounts which was also withdrawn. It is settled proposition of law that applicant cannot avail remedy of arbitration if he has already effectively availed remedy of Civil Suit. Had the suit been dismissed on the ground of jurisdiction, the applicant could invoke arbitration clause of partnership deed, however, Civil Court has decided the suit on merits, thus, case of the applicant is hit by doctrine of *res judicata*.

7. In the wake of above discussion and findings, this Court is of the considered opinion that present application being bereft of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

30.07.2025
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No