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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13.05.2025

+ **ARB.P. 238/2025 & I.A. 11897/2025**

NARESH KUMAR & ANR.

.....Petitioners

Through: **Mr.Himanshu Gupta, Advocate**

versus

SUSHIL KUMAR

.....Respondent

Through: **Mr.Kumar Ankur, Mr.Bipul Kedia,
Mr.Karan Bindra and Mr.Anupam
Prakash, Advocates**

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (ORAL)

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator for adjudication of disputes between the parties arising out of the Partnership Deed dated 16.01.1994.

2. The facts are that a partnership firmnamely M/s. Jagdamba Industries comprising of four partners being Mr. Sushil Kumar (Respondent No.1), Smt. Bimla Devi (mother of Petitioner No.1), Smt. Khazana Devi and Smt. Maya Devi was constituted vide Partnership Deed dated 01.04.1985. On 15.01.1994 Smt. Maya Devi and Smt. KhazanaDevi retired, as partners, from M/s Jagdamba Industries, vide Retirement Deed dated 17.01.1994.

3. Thereafter, the petitioner nos. 1 and 2 were inducted as partners in the



said firm vide Partnership Deed dated 16.01.1994.

4. Smt. Bimla Devi died during the pendency of the present proceedings.

5. Since, there were disputes between the parties, the petitioners invoked the arbitration vide legal notice dated 08.05.2024, and thereafter, filed the present petition.

6. Mr.Kumar Ankur, learned counsel for the respondent has disputed the territorial jurisdiction of this Court and has filed the reply. However, the same is not on record and a copy has been handed over, which is taken on record.

7. Learned counsel for the respondent states that this Court does not have territorial jurisdiction to entertain and try the present petition. He states that none of the partners reside in Delhi and the disputed property of which, division is sought, is also situated in Noida. Hence, this Court does not have the jurisdiction to entertain and try the present petition.

8. He further relies on the judgment passed by a coordinate bench of this court in ***Faith Constructions vs. N.W.G.E.L. Church***, 2025 SCC OnLine Del 1746 and more particularly para 7 which reads as under:

“7. As regards the primary objection taken by the respondent vis-à-vis territorial jurisdiction of this Court to entertain the present petition, the same warrants a factual and legal analysis. It is a settled position in law that when the arbitration agreement is silent on the aspect of ‘seat’, ‘venue’ or ‘place’ of arbitration, the determining factor will be where the cause of action arises as well as where the defendant/respondent actually or voluntarily resides or carries on their business. In other words, Section 2(1)(e) of the A&C Act has to be read in light with Sections 16 to 20 of CPC to determine the territorial



jurisdiction of the Court at the stage of considering referral to arbitration in a Section 11 A&C Act petition.”

9. Per Contra, Mr. Gupta, learned counsel for the petitioner draws my attention to Clause 2 of the Partnership Deed dated 16.01.1994 and the same reads as under:-

“...2. That the principle office of the firm will be 439-D, Bhola Nath Nagar, Street no. 8, Shahdara, Delhi- 100032 and its branch office at W-42, Sector-11, NOIDA.”

10. He further states that the firm M/s. Jagdamba Industries, is also registered with the Registrar of Firms Acts, New Delhi, under Section 59 of the Partnership Act.

11. I have learned counsel for the parties.

12. In the present case, the disputes arise out of the Partnership Deed dated 16.01.1994, which stipulates that the principal office of the firm is located in New Delhi. Further, the partnership firm is also registered in New Delhi. I am of the view that the fountainhead of the disputes between the parties is the Partnership Deed dated 16.01.1994, as all the disputes are with regard to the partnership properties.

13. In this regard, the judgment of the Coordinate Bench of this Court in **Madhu Devi Fatehpuria vs. Jugal Kishore Shyam Prakash & Co. and Others**, 2020 SCC OnLine Del 1487, is relevant and more particularly paragraphs 26 and 28, which read as under:-

“26. In so far as the Territorial Jurisdiction of this Court is concerned, the petitioner is right in its contention that the partnership firm is registered with the Registrar of Firms at



Delhi. Provisions of Section 58 to 60 of the Indian Partnership Act, 1932 clearly envisage the registration at the place where the principal place of business of the firm takes place. The requirement of law under the said provisions mandates the partners to disclose in the requisite Form, the address of the principal place of business. The Certificate of Registration of the partnership firm placed on record by the petitioner indicates that the firm is indeed registered at Delhi and thus, there is a presumption that the Registrar would have verified the principal place of the firm being at Delhi, before according registration.

.....

28. The Arbitration Clause as reproduced above does not mention either the seat or the venue of Arbitration. In the absence of the seat or the venue having been agreed upon between the parties, the registration of the firm at Delhi in my view would be a factor to determine the Territorial jurisdiction of this Court, more particularly looking at the nature of disputes sought to be referred. Thus, this Court would have Territorial jurisdiction to entertain the present petition and this objection of the respondents cannot be sustained”

14. The judgment of the Hon’ble Supreme Court in **A.B.C. Laminart (P) Ltd. and Another vs. A.P.Agencies, Salem**, 1989 SCC OnLine SC 122, is also relevant and more particularly paragraph 15, which reads as under:-

“15. In the matter of a contract there may arise causes of



action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have been performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place



where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors”

15. The judgment reproduced above fortify the view expressed in para 12 above.

16. On the other hand, the judgment of **Faith Constructions** (supra), relied upon by learned counsel for the respondent, and more particularly, paragraph 7, may not apply to the facts of the present case, as in the present case, the disputes are stemming from the Partnership Deed executed between the parties. In **Faith Constructions** (supra), the subject agreement was executed and notarised in Odisha and also the construction work under the subject agreement was to be done in Odisha. Thus, the court was of the view that no cause of action has arisen in Delhi, whereas in the present case, the Partnership Deed is the basic document governing the contractual relationship which both is registered at Delhi and envisages the principle office of the firm at Delhi.

17. For the said reasons, the petition is allowed and the following directions are issued:-

- i) Mr. Justice (Retd.) Vipin Sanghi, Former Chief Justice, Uttarakhand High Court (Mob. No.: +91 9871300037) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis and rules of the



- Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi) The parties shall approach the learned Arbitrator within two weeks from today.

18. The present petition alongwith pending application is disposed of in the aforesaid terms.

JASMEET SINGH, J

MAY 13, 2025/dy

(Corrected and released on 20.05.2025)

Click here to check corrigendum, if any