



2025:DHC:1808



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

% Reserved on : 27.02.2025
Pronounced on : 20.03.2025

+ **ARB.P. 1182/2024**

MR PRASHANT KUMAR PARASHARPetitioner
Through: Mr. Varun Katiyar, Advocate.

versus

MR SUMIT SINGLA & ANR.Respondents
Through: Mr. Sushant Dogra, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks appointment of an Arbitral Tribunal comprising of a Sole Arbitrator, to adjudicate upon the disputes that have arisen between the parties.
2. The present dispute arises in the context of a Franchise Agreement dated 19.01.2023 and a Partnership Deed dated 21.08.2023. The aforesaid Franchise Agreement was entered into between the petitioner's mother *Ms. Sanju Parashar* and respondent No.1's company, *KoffBew India Private Limited*, vide which a franchise of *Coffee Brewery* was obtained. The petitioner claims that the said franchise business was his own venture pursued through his mother.



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It is claimed that, subsequently, respondent No. 1 suggested to start a formal partnership business with the petitioner, with one more partner for which purpose, the petitioner and respondent Nos. 1 and 2 formed a partnership firm by the name *Suyash Food Works*, and executed a partnership deed dated 21.08.2023.

3. It is the case of the petitioner that after entering into the Partnership Deed, the petitioner made payments to respondent No.1 on various occasions and requested him to be provided with details and invoices via multiple communications/emails, however, respondent Nos.1 and 2 failed to provide the same. Further, respondent Nos. 1 and 2 also failed to bring in their share of capital in the partnership firm. Resultantly, the petitioner served respondent No.1 with a legal notice dated 15.02.2024 claiming that respondent No.1 had defrauded the petitioner to the extent of Rs.22,56,136/- paid in pursuance of execution of the Franchise Agreement and thereafter, lured him into entering the Partnership Deed, failing to fulfil his obligations therein as well. Whereafter, the petitioner claims to have been removed by the respondents from all their WhatsApp groups of the Partnership Business Operation.

4. Learned counsel for the petitioner submits that disputes having arisen between the parties in the context of the two subject agreements, which according to him are interconnected, the petitioner served a legal notice dated 06.06.2024 upon the respondents to initiate proceedings under the A&C Act in terms of Clause 20 of the Partnership Deed (hereinafter, '*arbitration clause*').

5. Learned counsel for the respondents, at the outset, opposes the petition on the grounds of maintainability and states that this Court does not



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have the territorial jurisdiction to entertain the present petition. It is submitted that the arbitration clause in the Partnership Deed is silent as to the 'seat', 'venue' or 'place' of arbitration. In such a case, he contends that territorial jurisdiction will lie where the respondent actually or voluntarily resides or carries on business, or where any part of cause of action has arisen. In support of his submission, learned counsel places reliance on the decision of the Supreme Court in Ravi Ranjan Developers (P) Ltd. v. Aditya Kumar Chatterjee, reported as **2022 SCC OnLine SC 568** to submit that while determining the territorial jurisdiction of a Court under Section 11 of the A&C Act, it has to harmoniously be read with Section 2(1)(e) of the Act as well as Sections 16 to 20 of the Civil Procedure Code, 1908 (CPC).

It is the case of the respondents that no part of cause of action arises in Delhi. To substantiate the same, learned counsel points out that the arbitration clause in Partnership Deed itself is silent on the aspect of 'seat' or 'venue' of arbitration. The respondents have disputed that the petitioner could refer to the alleged disputes under the Franchise Agreement as part of the disputes between the parties under the Partnership Deed. It is submitted that none of the parties herein are parties to the Franchise Agreement, which was executed by separate entities. It is contended that even if misplaced reference by the petitioner to the Franchise Agreement is accepted for the sake of arguments, even then, the territorial jurisdiction of this Court is not attracted. In Clause 28(9) of the Franchise Agreement, territorial jurisdiction is agreed to be that of Courts at Bangalore.

The arbitration is invoked under Clause 20 of the Partnership Deed which pertains to a business proposed to be carried out at Bangalore. The deed is executed in Bangalore. Both the Respondents are residents of



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Bangalore.

6. Learned counsel for the petitioner has rebutted the territorial jurisdiction objection raised by the Respondents by contending that part of the cause of action arose in Delhi. It is argued that the petitioner made payments to the respondents from Delhi, which establishes accrual of part of cause of action in Delhi. The payments have been made via bank transactions from his bank account in Delhi. To supplement his argument, the petitioner has again made references to Franchise Agreement-which admittedly, he is not a party to, to claim that since his mother, who has signed the Franchise Agreement, resides in Delhi, the same shows accrual of part of cause of action in Delhi.

Moreover, in the absence of any 'seat' or 'venue' given in the arbitration clause, the petitioner contends that it is essential to consider the 'nature of business' while determining where the cause of action arises. In support of the same, learned counsel submits that at the centre of the present dispute is the franchisee given by respondent No.1 to the petitioner (in the name of his mother) and the nature of the business is such that it is not restricted to one place of operation. It is also pointed out that in terms of Clause 6 of the Partnership Deed, the nature of business was not defined to be constricted in a particular location but applicable to all business of restaurants, food cafes, food courts, and allied businesses decided to be carried on between the partners. Therefore, the arbitration clause, which is contained in the Partnership Deed, cannot be said to arise vis-à-vis the location of the *Coffee Brewery*, which is admittedly the subject matter of the Franchise Agreement and at best, only raises a part of cause of action.

7. I have heard learned counsels for the parties and gone through the



material and case law(s) placed on record.

8. Notably, the arbitration clause invoked by the petitioner is contained in the Partnership Deed, executed by the parties. References to Franchise Agreement, by either party is not relevant for the purpose of deciding jurisdiction of this court. On merits, the petitioner may be able to establish some overlapping between Franchise Agreement and Partnership Deed, however, that's for the Arbitrator to examine based on the submissions of the parties and the facts of the matter. Therefore, as stated above, there is no need to examine the overlap between the two agreements in these proceedings.

9. As regards the question of territorial jurisdiction of this Court, it is purely decided based on the arbitration agreement existing in the Partnership Deed. 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 petition under Section 11 A&C of the Act.

10. A gainful reference may be made to the decisions of the Supreme Court in BBR (India) (P) Ltd. v. S.P. Singla Constructions (P) Ltd., (2023) 1 SCC 693, and Ravi Ranjan Developers (P) Ltd. v. Aditya Kumar Chatterjee, reported as 2022 SCC OnLine SC 568. In the latter, it was held, as under:

“27. At the same time, an application under Section 11(6) of the A&C Act for appointment of an Arbitrator/Arbitral Tribunal cannot be moved in any High Court in India, irrespective of its territorial



jurisdiction. Section 11(6) of the A&C Act has to be harmoniously read with Section 2(1)(e) of the A&C Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the A&C Act.

28. It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent.”

(Emphasis supplied)

11. A perusal of the aforementioned legal position makes it amply clear that at the stage of determining the jurisdiction of the Court to entertain a Section 11 A&C Act petition, in case of lack of consent between the parties as to the seat/venue of arbitration, which is reflected from the arbitration clause of the subject agreement, the Court must determine jurisdiction by taking the aid of Sections 16 to 20 of the CPC. In such a case, two factors are of relevance– (i) where the respondent actually or voluntarily resides or carries on their business, and (ii) where the cause of action, wholly or in part, arises. As regards the first factor, it is undisputed that both the respondents reside in Bangalore. Therefore, our discussion becomes predominantly centred around examining the second factor, i.e., where the cause of action arises.

12. A catena of Supreme Court decisions have clarified that while determining territorial jurisdiction of a Court, what is decisive is the accrual of cause of action. In other words, cause of action is a bundle of facts which create rights and obligations and gives rise to the right to sue to a party. Moreover, cause of action is made up of material and integral facts.



This implies that not every insignificant or inconsequential fact becomes a part of cause of action. In fact, for a fact to be considered material enough to lead to the conclusion as to accrual of cause of action, it must be proved that the said fact has a nexus with *lis* between the parties and that it is integral to the dispute at hand. Reference may be made to the decision of the Apex Court in Alchemist Ltd. v. State Bank of Sikkim, reported as (2007) 11 SCC 335. Relevant part of it is reproduced herein:

*“25. The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. **In our judgment, the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the lis between the parties. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action.** It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered.”*

(Emphasis supplied)

13. Territorial jurisdiction of a Court is ascertained having regard to the place of accrual of cause of action. Some of the relevant principles that have developed in this area of jurisprudence are, including but not limited to, that making and signing of a contract constitutes cause of action; that facts which are necessary to decide the *lis* between the parties must have wholly or at least in part, arisen within the territorial jurisdiction of the Court; that each fact pleaded in the petition would not *ipso facto* be considered relevant while determining cause of action and that they must have a nexus with the issues involved in the matter; and importantly, that an insignificant or trivial part of cause of action would not be sufficient to confer territorial jurisdiction, even if incidentally forming a part of cause of



action.

14. Moreover, while determining accrual of cause of action vis-à-vis part payment, law is clear on the aspect insofar as the relevant factor for consideration is where money is expressly or impliedly payable. Such a place, when either specified by the terms of the contract or evident by the intent of the parties, shall validly have jurisdiction to adjudicate upon disputes arising out of the concerned contract. Reliance is placed on the decision of the Apex Court in A.B.C. Laminart (P) Ltd. v. A.P. Agencies, reported as (1989) 2 SCC 163; relevant parts being reproduced hereinunder:

“13. Under Section 20(c) of the Code of Civil Procedure subject to the limitation stated theretofore, every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part arises. It may be remembered that earlier Section 7 of Act 7 of 1888 added Explanation III as under:

“Explanation III.—In suits arising out of contract the cause of action arises within the meaning of this section at any of the following places, namely:

- (1) the place where the contract was made;*
- (2) the place where the contract was to be performed or performance thereof completed;*
- (3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.***”

xxx

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.”*

(Emphasis supplied)

15. Having discussed the prevalent legal position as to determination of accrual of cause of action, it is evident that for a fact to form part of the cause of action, it must be material and substantial in nature, in such a way that it effects the rights or obligations of the parties, and not incidental or remote thereto. Keeping in view the above, the factual position of the present case may be analysed.

16. In the present case, the Partnership Deed was indisputably executed in Bangalore and even the stamp papers were purchased in Bangalore. Moreover, the Partnership Deed specifies the principle place of business to be situated at Bangalore and even the place of business as governed by the Franchise Agreement, which is in regard to the restaurant-franchise by the name of *Coffee Brewery*, is located in Bangalore. In fact, as noted above, both the respondents are also residents of Bangalore. Considering the



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aforesaid, this Court is of the considered opinion that the material part of cause of action has arisen outside the territorial jurisdiction of this Court.

Insofar as the petitioner's contention as to the part of cause of action arising in Delhi is concerned, it is noted that the petitioner's resident being in Delhi is not a material fact of consideration while determining the accrual of cause of action.

17. As regards the argument that part payment was made from the petitioner's bank account in Delhi, it cannot be said to give rise to sufficient cause of action to justify the territorial jurisdiction of this Court. In fact, even as per the petitioner's own account statements, as placed on record, all subject payments were made in the account of respondent No.1's company, which has its registered office in Bangalore. Therefore, it is wholly misconceived to rest the argument of accrual of cause of action on the strength of this singular and insignificant fact, when the entire bundle of facts constituting the substantial and integral cause of action rests in Bangalore.

18. In light of the aforesaid facts and considering the aforementioned legal position, this Court is of the considered opinion that no part of cause of action can be said to have arisen within Delhi, ousting this Court's territorial jurisdiction to entertain the present petition. Accordingly, the same is dismissed.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 20, 2025/ik