Sr. No.06

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU
(Through Virtual Mode)

Arb P No.30/2026

Kamal Kishore Sharma and others. …Petitioner(s).

Through: Mr. Sachin Gupta, Advocate, with
Ms. Arsha Sharma, Advocate.

Vs.

Varun Sharma and another. ….Respondent(s)

Through: Mr. K. D. S. Kotwal, Advocate, for R1.
Ms. Purvehi Khajuria, Advocate, for R2.

CORAM:
HON'BLE THE CHIEF JUSTICE

O R D E R
23.10.2026

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator.

2. The brief facts of the case, as it emerges from the pleadings, are that the parties herein along with one namely Ram Pal Sharma had initially executed a partnership deed on 07.02.2019 for carrying on business relating to a Water Park, Food Court and Gaming Zone under the name and style of M/s Merlin's World, having its office at Shop No. 141, Phase II, Fruit Complex, Narwal, Jammu. The partnership was subsequently reconstituted vide deed dated 06.06.2019, whereby Ram Pal Sharma retired from the partnership and the remaining five partners, namely, Varun Sharma, Kamal Kishore Sharma, Vimal Kishore Sharma, Yugal Kishore Sharma (now deceased) and Gurmeet Singh, entered in the partnership business with an equal share of 20% each.

3. It is stated that the project was supposed to be established over 20 Kanals of land situated at Kirpalpur, near 4th Bridge, Phallanmandal Road,

Jammu, with each partner being entitled to utilise 4 Kanals of land. The total project capital was about Rs. 1,000 lakhs, comprising Rs. 250 lakhs to be contributed by the partners towards capital investment and Rs. 750 lakhs was expected to be made by way of a long-term loan from financial sector. It is further stated that the firm obtained the requisite registrations and permissions for undertaking the project, including registration under the Shops and Establishments Act, permission to drill a borewell and sanction of an electricity connection.

4. It is the case of the petitioners/applicants that, soon after the commencement of construction work, a show-cause notice dated 07.01.2020 came to be issued under Section 7(1) of the Control of Building Operation Act, 1988. Subsequently, respondent No. 1 abandoned the project and issued a legal notice dated 24.07.2020 upon the partners of the firm, seeking dissolution of the firm, whereafter the construction work came to be stopped. It is further contended that partners of the firm to resolve the disputes amicably through mediation but to no avail.

5. It is further stated that respondent No. 1 instituted a civil suit before the Civil Court on 13.11.2024, seeking a decree of permanent prohibitory injunction for restraining the defendants therein from interfering into the peaceful possession of land measuring 04 Kanals of land. The court below in terms of order dated 13.11.2024 passed an ex parte order directing the parties for maintenance of status quo. It is further stated that an application under Section 8 of the Arbitration and Conciliation Act, 1996, was also filed before the trial Court, which came to be dismissed and is stated to be pending consideration before the Court of the Principal District Judge, Jammu.

6. The petitioners, in view of the disputes having arisen between the parties concerning the partnership business, issued a notice dated 27.02.2026, invoking the arbitration clause and called upon the respondents for appointment of an Arbitrator.

7. It is stated that, despite service of the aforesaid notice, the respondents failed to respond for appointment of an Arbitrator within the stipulated period. The petitioners have, thus, approached this Court by way of the present petition under Section 11(6) of the Arbitration and

Conciliation Act, 1996, seeking appointment of an Arbitrator for adjudication of the disputes between the parties.

8. Pursuant to the notice issued by this Court, the respondent Nos. 1 & 2 have caused appearance and filed their response. The respondent No. 01 in his objections *inter alia* contends that the petition is not maintainable as the same has been filed under the Arbitration and Conciliation Act, 1996, however, as per the Partnership Deed, the parties were to be governed under the J&K Arbitration Act. On this count, the respondent No. 1 has sought dismissal of the present petition. It has been further contended that the present petition is hopelessly time barred owing to the fact that the notice for dissolution of the partnership was issued in the year 2020 while as the partnership stood dissolved with effect from 24.07.2020.

9. Respondent No. 2 has also filed his objections to the present wherein it has been stated that he has no objection with respect to the appointment of an independent arbitrator.

10. While going through the objections, the existence of the arbitration clause and its invocation by the petitioners vide notice dated 27.02.2026 is not disputed. Accordingly, learned counsels appearing for the respondent Nos. 1 & 2, as always, fairly submit that let an arbitrator be appointed, but the respondents be granted liberty to raise all possible pleas/ objections as also the issue regarding the limitation period before the Arbitrator.

11. Accordingly, with the consent of learned counsel for the parties, Mr. Sanjeev Gupta, Retired District and Sessions Judge, is appointed as the sole arbitrator. Who shall proceed with the matter in accordance with the provisions of the Act. And to make an award within the time provided in the Act itself after charging the prescribed fee along with incidental expenses to be shared by the parties.

12. The petition is accordingly disposed of with the above terms.

13. Registry to send a copy of this order to the learned arbitrator.

(DR. PUSHPENDRA SINGH BHATI)
CHIEF JUSTICE

Srinagar
23.10.2026
Aamir

Amir Rashid Sofi
I attest to the accuracy and
authenticity of this
document