Serial No.4

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**
**AT SRINAGAR**

**Arb P 9/2026**
**CM(6773/2026)**

**ABDUL REHMAN WANI ...PETITIONER(S)**

Through:
Mr. Nisar Ahmad Bhat, Advocate.
Ms. Shah Bareera Fatima, Advocate

V/s.

**GH. MOHI UD DIN KHAN AND OTHERS ...RESPONDENT(S)**

Through:
Mr. Aftab Ahmad, Advocate.

**CORAM:**
**HON'BLE THE CHIEF JUSTICE**

**ORDER**
*30.10.2026*

1. The petitioner has approached this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator in terms of Clause 18 of the partnership deed dated 22.04.2004, executed between the petitioner and the respondents for running the business under the name and style of M/s Itifaq Filling & Service Station, Sheikhpora, Budgam.

2. The case set up by the petitioner is that, in terms of the aforesaid partnership deed, the partners were entitled to equal shares in the profits and losses of the firm, besides a monthly salary of Rs.3,500/-. It is pleaded that the petitioner, despite being an active partner, was neither paid his monthly salary nor his share in the profits of the firm. It is further pleaded that the respondents have relied upon a retirement deed dated 09.06.2018, which is disputed by

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the petitioner on the ground that he has neither executed the same nor received any amount towards settlement of his share in the partnership business.

3. Respondent No. 1 has filed objections, opposing the petition on the following grounds:

a. that the petitioner had retired from the partnership in terms of the aforesaid retirement deed and had received his share towards capital, profits and other dues through respondent No. 4, who was holding a General Power of Attorney executed by the petitioner.

b. the accounts of the partnership firm were settled and an amount of Rs.47.00 lacs was paid towards the petitioner's share; and

c. the present petition has been filed after an inordinate delay, as the retirement deed is stated to have been executed in the year 2018, whereas the notice invoking arbitration was issued only on 10.09.2025.

HIGH COURT JAMMU & KASHMIR AND LADAKH

4. The controversy between the parties, thus, primarily relates to the alleged retirement of the petitioner from the partnership, the genuineness and effect of the retirement deed and the compromise stated to have been executed between the parties, besides the settlement of accounts and the entitlement of the petitioner, if any, towards his share in the partnership business.

5. It is not disputed that the parties had executed a partnership deed dated 22.04.2004, which contains an arbitration clause. The

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petitioner has also placed on record the notice dated 10.09.2025, stated to have been served upon the respondents for appointment of an Arbitrator. However, no Arbitrator has been appointed by the respondents.

6. The objections raised by respondent No. 1 with regard to the alleged retirement of the petitioner, settlement of accounts and payment of his share involve disputed questions of fact. The petitioner, on the other hand, specifically disputes the execution of the retirement deed and the alleged settlement. These are matters which would require consideration on the basis of the pleadings and evidence to be produced by the parties. This Court, while exercising jurisdiction under Section 11 of the Act, is not required to undertake an elaborate examination of such disputed questions or express any opinion on the merits of the respective claims.

7. The objection regarding delay and limitation raised by respondent No. 1 shall also remain open for consideration by the learned Arbitrator, in accordance with law, along with the other objections which may be available to the parties.

8. Respondent No. 4 has filed a reply supporting the petitioner's claim and the prayer for appointment of an Arbitrator. He says he too has been deprived of his share by respondent Nos. 1 to 3. He denies that either he or the petitioner received any money from them, and he consents to the appointment of an Arbitrator by this Court.

9. In view of the existence of the arbitration clause and the failure of the parties to arrive at an agreement with regard to

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appointment of an Arbitrator, this Court finds it appropriate to appoint an independent Sole Arbitrator to adjudicate upon the disputes between the parties.

10. Accordingly, **Mr. Mohammad Ibrahim Wani**, Retired District & Sessions Judge, resident of House No. 112, Khushipora, HMT, Srinagar, Contact No. 9419582469, is appointed as the Sole Arbitrator to adjudicate upon the disputes arising between the parties out of the partnership deed dated 22.04.2004. The learned Arbitrator shall also be entitled to determine his fee in accordance with law and the applicable provisions of the Act.

11. It is made clear that this Court has not expressed any opinion on the merits of the rival claims and all questions, including the genuineness and legal effect of the retirement deed, the alleged compromise, settlement of accounts and the objection regarding limitation, shall remain open for consideration by the learned Arbitrator in accordance with law.

12. The petition is, accordingly, disposed of.

13. Registry to communicate a copy of this order to the learned Arbitrator for information and necessary action.

**(DR. PUSHPENDRA SINGH BHATI)**
**CHIEF JUSTICE**

**SRINAGAR:**
30.10.2026
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