
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION (ST) NO.1949 OF 2026
WITH
INTERIM APPLICATION NO.2218 OF 2026
IN
REVIEW PETITION (ST) NO.1949 OF 2026

Ramesh Kesarimal Sonigara & Ors.

....Petitioners

Versus

Matoshree Infrastructure Pvt. Ltd. & Ors.

....Respondents

Mr. Abhishek Kothari *a/w. Purushottam G. Chavan, Kiran Murlidhar Ghadage & Arvind Zumerrao Wagaj, for Review Petitioners.*

Mr. Aseem Naphade *a/w. Ms Swati Pawar, Mr. Utkarsh Pawar i/b. S.K. Legal Associates LLP, for Respondent No.1.*

Mr. Rahul Gode, *for Respondent No.2.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 23, 2026

ORAL JUDGEMENT :

1. Reply filed by Learned Advocate for the Respondent is taken on record.

Liberty to file the same with the Registry.

2. This is a Review Petition seeking review of an Order of this Bench in Commercial Arbitration Petition (Stamp) No. 26379 of 2025 dated September 2, 2025, by which this Court, upon noticing the existence of an arbitration agreement in a Joint Venture Agreement dated December 31, 2012 (“**JV**

Agreement") between Respondent No.1, Matoshree Infrastructure Pvt. Ltd. ("**Matoshree**") and Respondent No.4, M/s. Varad Vinayak Infra ("**Varad Vinayak**"), passed an Order under Section 11 of the Arbitration and Conciliation Act, 1996 ("**the Act**"), enabling the constitution of a three-member Arbitral Tribunal as stipulated in the arbitration agreement.

3. The Petitioners in the Review Petition are collectively partners holding a 50% share in Varad Vinayak ("**Review Petitioners**"). Respondent No.2, Rahul Padmakar Godse ("**Godse**") holds the balance 50% share.

4. The Review Petition is based primarily on the premise that Matoshree was fully aware that the composition of Varad Vinayak had undergone a significant change with the Review Petitioners having come in as 50% partners since January 29, 2021, with Respondent No. 3, Mr. Shailendra K. Ghorpade ("**Ghorpade**") having exited the firm on the same date.

5. It is the contention of the Review Petitioners that despite being fully aware of the entry of the Review Petitioners into Varad Vinayak, Matoshree chose not to make them a party to the invocation notice and to the Section 11 proceedings and got an Arbitral Tribunal constituted, which constitutes a fraud on the Firm and on this Court. Specifically, a reference is made to pleadings in the original Section 11 Petition which indicates that the partners of Varad Vinayak are Godse and Ghorpade. Put differently, the contention is that despite being aware that Ghorpade had exited the partnership firm and the Review Petitioners had come in, an impression was given to this Court that

Godse and Ghorpade were still partners of the firm which led to the Arbitral Tribunal being constituted. This is alleged to have been a strategy to serve Ghorpade a retired partner who had nothing to do with the firm, and a 50% partner who did not resist the constitution of the Learned Arbitral Tribunal.

6. Having heard Mr. Abhishek Kothari, Learned Advocate for the Review Petitioners and Mr. Aseem Naphde, Learned Advocate for Matoshree at length, in my opinion, without meaning to dilute the impact of the alleged misstatement in the Section 11 Petition (which is attributed by Learned Advocate for Matoshree to a *bona fide* error), in my opinion, a case for a review has not been made out.

7. When the Review Petitioners entered Varad Vinayak as partners, the firm was already party to the JV Agreement (executed in 2012) and had bound itself to the arbitration agreement contained therein. Therefore, when the Review Petitioners entered Varad Vinayak, they inherited the existing business relationships that the firm had already contracted, which included the JV Agreement. Therefore, in order to initiate arbitration, it cannot be said that every partner of the firm must be given notice or be made party to a Section 11 application.

8. Learned Advocate for the Review Petitioners points to Order XXX Rule 1 of the Civil Procedure Court, 1908 to indicate that at least two persons who are partners must be identified at the time of suing for a partnership firm or when suing a firm. Be that as it may, in the facts of the case, since Varad Vinayak

already had an arbitration agreement and had consciously agreed to submit all disputes and differences under the JV Agreement to arbitration, the Review Petitioners inherited the arbitration agreement, and therefore, would have had to arrange the affairs of the firm internally with Godse in a manner that any checks and balances that the partners perceive as necessary among them are put in place. The change of composition of the firm cannot impact the ability of third parties with whom binding arbitration agreements have already been executed, to require identification of each and every partner or at least one more partner to initiate arbitration proceedings against them.

9. The reliance on behalf of Matoshree on the law declared in ***Chhotelal Pyarelal***¹, which is followed by a judgment of this Court in ***Meghji***² and another judgment by the Single Judge of this Court in ***Aftab Currim***³ would underline the fact that it was not necessary for each partner of a firm or more than one partner of a firm to be identified at the stage of initiating proceedings including proceedings under Section 11 of the Act. The approach of the Supreme Court evidently appears to have been to treat the proceedings against the firm as proceedings against all the partners with liberty being given to the counter party to add as parties, the other partners whose names have been left out in the first instance.

1 *Chhotelal Pyarelal Partnership Firm & Ors. v. Shikarchand* – (1984) 4 SCC 343

2 *Meghji Kanji Saha v. Bhaskarrao Ganpatrao Walokar* – 1986 Mh.L.J.732

3 *Aftab Currim v. Ibrahim Currim & Sons* – 2022 SCC Online Bom 801

10. It is pointed out on behalf of Matoshree that in the arbitration proceedings that are underway, the Review Petitioners have been made parties and they will have full opportunity to defend themselves. Against this facet, Learned Advocate for the Review Petitioners submits that the provisions of Section 19(2) of the Partnership Act, 1932 would also need to be considered and it was not open to Godse alone to agree to proceed to arbitration. This facet of the matter also does not appeal to me inasmuch as whether or not a partner could submit a dispute under a pre-existing arbitration agreement that was executed more than a decade ago would have to be considered in the context of custom and usage, and evidence may need to be seen of other contracts that the firm is a party to under which arbitration proceedings may have been conducted in the past. That apart, evidently, the Section 11 Order sought to be reviewed is an order on merits and not a consent order.

11. Matters of evidence on custom and usage fall squarely outside the domain of the Section 11 Court whose jurisdiction is restricted to examining the existence of an arbitration agreement examining the formal existence of an arbitration agreement. Existential substance falls in the domain of the Learned Arbitral Tribunal. As rightly pointed out on behalf of Matoshree, even if the Review Petitioners had been parties to the Section 11 Petition, the outcome would not have been different inasmuch as the existence of the arbitration agreement is writ large on the face of the record and that fact is not even contested by the Review Petitioners – their grievance is that the firm

could not have been party to the Section 11 Petition without at least two partners being made parties and deliberately one retired partner was named as a party to mislead the Court.

12. It is made clear that any submissions that the Review Petitioners would be desirous of making to the Learned Arbitral Tribunal in this regard including their allegations of sharp practices having been indulged in to have a Tribunal being constituted would be fully available to them to pursue before the Learned Arbitral Tribunal.

13. Needless to say, Matoshree would also be at liberty to explain its position in respect of such allegations – prima facie, it appears that the addresses on which service was effected and the persons to whom service was effected was in line with the contents of the JV Agreement, which of course, is said to have become outdated, to the knowledge of Matroshree.

14. With the aforesaid observations, in our opinion, the Review Petition is misconceived and cannot be entertained in the context of the facts of the case.

15. Needless to say, all the observations in this order are based on the threshold to be met for entertaining a review. It is also now clear law that Section 11 jurisdiction does not entail a review, but since an allegation of a sharp practice and a fraudulent pleading stating that Ghorpade and Godse alone were partners, had been levelled, the Petition was considered at some length. However, the outcome is as stated above.

16. The Petition is hereby *finally disposed of*.
17. In view of disposal of the Review Petition, nothing survives in the captioned Interim Application and the same is also disposed of accordingly.
18. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]