

Meena

**IN THE HIGH COURT OF BOMBAY AT GOA  
APPLN FOR APPOINTMENT OF ARBITRATOR NO. 6 OF 2023**

Mr. Manohar Madhu Phadte,  
Son of late Madhu Phadte,  
70 years of age, Indian National,  
resident of House No.529,  
Manas Wadda, Kundaim- Goa. ... Applicant

v/s.

Mr. Prashant Madhu Phadte,  
Son of late Madhu Phadte,  
55 year of age, Indian National,  
Shed No.1178, Survey No.10/17 of Kundaim  
Village, Manas Wadda, Kundaim- Goa. ... Respondent

Mr Nilesh Shirodkar, Advocate for the Applicant.

Mr. Gaurish Agni with Mr Kishan Kavlekar, Advocates for the  
Respondent.

**CORAM:** BHARAT P. DESHPANDE, J

**RESERVED ON:** 12<sup>th</sup> December, 2023

**PRONOUNCED** 3<sup>rd</sup> January, 2024  
**ON:**

**ORDER:**

1. This application is under Section 11 of the Arbitration and Conciliation Act, 1996 filed for the purpose of appointment of Arbitrator to resolve the dispute between the parties.

2. The case of the applicant is that he is one of the partner of the Partnership Deed dated 29<sup>th</sup> April 2009 which was registered before a Notary Public.

3. The partner No.1 that is Mr Madhu Phadte expired on 24<sup>th</sup> August 2017 and in terms of clause No.22 of the Partnership Deed, the applicant is entitled for the profit share of partner No.1's assets and liabilities. The respondent who is one of the partner of the said firm failed to disclose profit share of the firm.

4. Applicant by his notice dated 28<sup>th</sup> September 2022 called upon respondent to remit all accounts of the partnership firm from the date of the constitution of the firm till 31<sup>st</sup> March 2022 within a period of 15 days from the date of receipt of the notice. Respondent instead of supplying such details, claimed that the partnership firm was not in operation and that the business was proprietary Business of the respondent.

5. Heard the learned counsels for the parties.

6. Mr Shirodkar appearing for the applicant would submit that the partnership deed is in existence and there is a dispute between the partners. He would further submit that respondent who is conducting the business failed to submit accounts and after the death

of father of the applicant, who was partner No.1, a notice was sent to the respondent to submit relevant details of the partnership business. He would further submit that Partnership Deed contains an arbitration clause by which any dispute between the parties is required to be adjudicated by an Arbitrator appointed by the parties. Since respondent failed to agree for the appointment of Arbitrator by consent, applicant had to approach this Court under Section 11 of the Arbitration and Conciliation Act. He then submitted that though Partnership Deed is not registered before the Registrar of Partnership, it has been notarized before Notary Public. He would then submit that even though no Partnership Deed is registered, the dispute between the partners could be referred to an Arbitrator appointed by this Court. He then submitted that this Court has jurisdiction under Section 11 of the said Act to appoint an Arbitrator even though Deed of Partnership is not duly registered. He placed reliance on the following decisions.

**1. Umesh Goel v/s. Himachal Pradesh Cooperative Group Housing Society Limited [2016 AIR (SC) 3116]**

**2. Kamal Pushp Enterprises v/s. D.R. Construction Company [2000 AIR (SC) 2676]**

**3. Ananthesh Bhakta Represented by mother Usha A. Bhakta and Ors v/s. Nayana S. Bhakta and Ors. [2016 O AIR (SC) 5359]**

**4. Md. Wasim and Another v/s. Bengal Refrigeration and Company and others [2022 O Supreme (Cal) 278]**

**5. Smt. Tulsi Khemawala v/s. Smt. Parveen Arya  
[2017 O Supreme(Raj) 2416]**

7. The learned Counsel for the respondent raised only one objection in connection with the present application. According to him, application under Section 11 of the said Act is not maintainable since the Partnership Deed is admittedly an unregistered Deed and thus applicant is not entitled to approach this Court for an Appointment of Arbitrator under Section 11 of the said Act.

8. Mr Madhu since deceased along with Mr Manohar, the applicant and Mr Prashant, respondent entered into a Deed of Partnership on 29th April 2009. The Partnership Deed though not registered, was notarized and acted upon. Mr Madhu and Mr Prashant were the active partners whereas Mr Manohar, the applicant was the dormant partner. The share capital of each partner in the Partnership Deed is provided in clause 5. The Partnership Deed is 'At Will' as provided in clause 4. It further provides that all assets and liabilities of partner No.1, Madhu shall be transferred to the newly constituted firm with effect from execution of the Partnership Deed and all the on-going works undertaken by the party No.1 shall be carried out and completed by the newly constituted firm. As per clause 15, death of the partner shall not operate as dissolution of the partnership and equal responsibilities on the heirs of the deceased

partner shall be entitled to interfere in the management of the affairs of the firm.

9. For the purpose of deciding present application, clauses 21 and 22 of the Deed are material. Clause 22 says that in the event of death of Madhu during the subsistence of the Deed, all his assets and liabilities shall stand transferred to the applicant. There is no dispute that Madhu expired on 24th August 2017. Accordingly, all assets and liabilities of deceased Madhu stand transferred in favour of the applicant as per clause 22 of the Deed. Further there is no dispute that the Partnership Deed still exist and there is no dissolution of such Deed by either parties.

10. The defence raised by respondent that though Partnership Deed was executed, it never came into existence and the business was conducted by respondent as his proprietorship concern. This defence cannot be looked into for the simple reason that Partnership Deed still exist and there is no dissolution of such Deed till date.

11. The objection raised by the respondent for appointment of Arbitrator is that the Deed is unregistered and therefore application under Section 11 of the Arbitration and Conciliation Act is not tenable.

12. Such objection raised on behalf of respondent is no more res integra as this aspect was considered by the Apex Court in the case of **Umesh Goel**(supra) wherein it has been decided that Section 69 of Partnership Act will not come in the way of Section 11 while deciding the matter of Appointment of Arbitrator to resolve the dispute between the parties.

13. In **Umesh Goel**(supra), the Apex Court in para 12 formulated the question which was raised in that matter. The question raised was that by virtue of sub-Section (3) whether the expression ‘other proceedings’ contained therein will include Arbitral proceedings and can be equated to a suit filed in a Court and thereby the ban imposed against an unregistered firm can operate in the matter of Arbitral proceedings. Finally after considering various provisions of the Partnership Act, Arbitration and Conciliation Act and Limitation Act, it has been held in para 36 that Arbitral proceedings will not come under the expression ‘other proceedings’ of section 69 sub Section 3 of the Partnership Act and therefore ban imposed under Section 69 can have no application to Arbitral proceedings as well as Arbitral award.

14. Kolkata High Court in the case of **Mohammad Wasim**(supra) considered this aspect and held that non-registration of partnership firm would not be a bar under Section 69 of the

Partnership Act for institution of proceedings under section 11 of the Arbitration and Conciliation Act.

15. In view of the above settled proposition of law, objection raised by the respondent in connection with unregistered Partnership Deed, cannot debar the applicant from seeking appointment of Arbitrator under Section 11 of the said Act for the purpose of resolving the dispute between the parties. The application, therefore, needs to be allowed.

16. In these circumstances, the following order is passed :-

- a. Mr. Pradeep V. Sawaikar, a Former District Judge, is appointed as the Sole Arbitrator to decide upon the disputes and differences between the Applicant and the Respondent arising out of Deed Partnership dated 29/04/2009.
- b. A copy of this order will be communicated to the learned Sole Arbitrator by the Advocate for the Applicant within a period of one week from today.
- c. The learned Sole Arbitrator is requested to forward his Statement of Disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration Act to the Advocate for the Applicant so as to enable him to file the same in the Registry of this Court. The Registry of this

Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent.

- d. The parties shall appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions with regard to fixing a schedule for completing pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.
- e. Contact and communication particulars shall be provided by both sides to the learned Sole Arbitrator within a period of one week from today. This information shall include a valid and functional email address as well as the mobile numbers of the respective Advocates.
- f. The parties have agreed that the Sole Arbitrator shall charge his fees as per the 4<sup>th</sup> Schedule of the Arbitration and Conciliation Act, 1996 read with the Bombay High Court (Fee payable to Arbitrators) Rules, 2018. The parties have further agreed that all the arbitral costs and the fees of the Arbitrator will be borne by the Applicant and the Respondent equally and will be subject to the final Award that may be passed by the Tribunal.
- g. The parties immediately consent to a further extension of six months to complete the arbitration, should the learned Sole Arbitrator

find it necessary.

- h. The parties have agreed that the seat of the arbitration will be at Panaji, Goa. However, the venue of the Arbitration shall be decided by the Sole Arbitrator taking into consideration convenience of the parties as well as his convenience.

17. In view of above, Application stands disposed of.

**B. P. DESHPANDE, J**

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VISHAL  
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