

2025 LiveLaw (SC) 269

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY CIVIL JURISDICTION
J.B. PARDIWALA; J., R. MAHADEVAN; J.

21st February, 2025.

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. 4330 OF 2025
RAHUL VERMA & Ors. versus RAMPAT LAL VERMA & Ors.

Arbitration and Conciliation Act, 1996; Section 40 - Death of a partner - Whether legal heirs of a deceased partner, though non-signatories to the partnership deed, are bound by the arbitration agreement contained therein. Whether the right to sue for rendition of accounts survives to the legal heirs of a deceased partner, entitling them to invoke the arbitration clause. Held, an arbitration agreement does not cease to exist upon the death of a party and is enforceable by or against the legal representatives of the deceased. The term "partners" includes legal heirs, representatives, assigns, or legatees. Persons claiming under the rights of a deceased person are representatives of the deceased party, and both parties and their legal heirs are entitled to enforce and are bound by an arbitral award. Section 40 of the Arbitration and Conciliation Act, 1996, ensures the arbitration agreement's existence is unaffected by a party's death. The right to sue for rendition of accounts also survives, allowing legal representatives to assert or defend claims arising from the partnership agreement. The supreme court upheld the high court decision to allow the arbitration appeal. (Para 10)

[Arising out of impugned final judgment and order dated 22-10-2024 in ARBA No. 6/2024 passed by the Gauhati High Court]

For Petitioner(s): Ms. Shagufa Salim, AOR

For Respondent(s): Mr. Pavan Kumar Chaturvedi, AOR Mr. Nitish Kumar Since, Adv. Mr. Abhishek Raj, Adv. Mr. Amit Kumar Thakur, Adv. Mr. Pavan Kumar Chaturvedi, Adv.

ORDER

1. This petition arises from the judgment and order passed by the Gauhati High Court in Case No. Arb. A./6/2024 dated 22.10.2024 whereby the High Court allowed the appeal filed by the respondents herein under Section 37(1)(a) of the Arbitration and Conciliation Act, 1996 (for short, "**Act of 1996**") and thereby quashed and set aside the order dated 09.08.2024 passed by the Civil Judge (Sr. Div.), Dibrugarh in Misc. (J) Case No. 206/2024 arising out of Commercial Suit No. 02/2024 ("**impugned judgment**").
2. We heard Ms. Shagufa Salim, learned counsel appearing for the petitioners and Mr. Pavan Kumar Chaturvedi, learned counsel appearing for the respondents.
3. This litigation originates from a dispute between a partner of a partnership firm consisting the legal heirs of another deceased partner. The partnership firm consisted of three partners. It so happened that two of them passed away on 24.12.2022 and 21.11.2023, respectively. It appears from the materials on record that the respondents herein (original defendants in Commercial Suit No. 02/2024) preferred a petition under Section 8 of the Act of 1996 as Misc. (J) Case No. 206/2024 in Commercial Suit No. 02/2024 before the Commercial Court, at Dibrugarh for dismissal of the suit and a reference to arbitration. The petition was filed on the basis of an arbitration clause in the partnership deed. The said petition was dismissed by the Civil Judge.
4. Aggrieved by the dismissal of their petition under Section 8 of the Act of 1996, the respondents preferred an arbitration appeal in Case No. Arb. A./6/2024. The High Court

vide the impugned judgment held that a reading of clause no. 2 of the partnership deed makes it evident that the partnership deed is binding upon the heirs of the deceased partner. The said clause reads as follows:-

"2. The partnership came into existence on and from 1st day of April 1984 and continued and that the changed constitution came into existence on and from 18th day of September 1989 on the terms as mentioned therein and henceforward with effect from 1st day of April 1992 shall continue in future in accordance with the terms and provisions of this instrument and shall be AT WILL and may be carried on for any time till it is agreed to be carried on by the partners and determinable nevertheless as hereinafter provided. The death or retirement of any partner shall not have the effect of dissolving the partnership which will continue between the other partners and one of the heirs or one of the representatives of the deceased partner if so agreed. This partnership can be dissolved by any party giving two months' notice in writing to the other of his/her intention to do so, by common consent the partnership can be dissolved at any time."

5. It further observed that clause no. 15 of the partnership deed specifies the circumstances under which the parties may resort to arbitral proceedings. It held that the dispute between the parties pertains to the affairs of the partnership firm, specifically its dissolution. Since this particular circumstance is addressed in the partnership deed, Section 42(c) of the Partnership Act, 1932 would not impede the court from referring the matter to arbitration. The legal heirs of the deceased partner are entitled to invoke the arbitration clause and the sole surviving partner is also entitled to invoke the arbitration clause against the legal heirs of the deceased partner. The said clause reads as follows:-

"15. In case of any dispute or difference of opinion regarding the partnership affairs or regarding dissolution or discontinuance of the partnership business or at any time the matter shall be referred to arbitration. The award of the arbitrator of the Board of arbitrator so given shall be final and binding on the parties."

6. In such circumstances, referred to above, the petitioners-legal heirs of the deceased partner are here before this Court with the present petition.

7. Having gone through the materials on record, two questions fall for our consideration:

(i) Whether the legal heirs of a deceased partner in a partnership firm, being non-signatories to the partnership deed and in the absence of their explicit consent, can still be bound by the arbitration agreement prescribed therein?

(ii) Whether the right to sue for the rendition of accounts survive to the legal heirs of the deceased partner, entitling them to invoke the arbitration clause in the partnership deed?

8. The decision in the case of **Ravi Prakash Goel v. Chandra Prakash Goel & Anr.**, reported in **(2008) 13 SCC 667**, squarely covers the facts of the present case. This Court held that an arbitration agreement does not cease to exist on the death of any party and the arbitration agreement can be enforced by or against the legal representatives of the deceased. The Court emphasized on the definition of a 'legal representative' under Section 2(1)(g) of the Act of 1996 to hold that an arbitral agreement and the award is enforceable by or against the legal representatives of the deceased. The relevant observations are reproduced hereinbelow: -

"18. It is clear from Section 40 of the Arbitration Act that an arbitration agreement is not discharged by the death of any party thereto and on such death it is enforceable by or against the legal representatives of the deceased, nor is the authority of the arbitrator revoked by the death of the party appointing him, subject to the operation of any law by virtue of which the death of a person extinguishes the right of action of that person."

19. Section 2(1)(g) defines “legal representative” which reads thus:

“2. (1)(g) ‘legal representative’ means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;”

20. The definition of “legal representative” became necessary because such representatives are bound by and also entitled to enforce an arbitration agreement. Section 40 clearly says that an arbitration agreement is not discharged by the death of a party. The agreement remains enforceable by or against the legal representatives of the deceased. In our opinion, a person who has the right to represent the estate of the deceased person occupies the status of a legal person (sic representative). Section 35 of the 1996 Act which imparts the touch of finality to an arbitral award says that the award shall have binding effect on the “parties and persons claiming under them”. Persons claiming under the rights of a deceased person are the personal representatives of the deceased party and they have the right to enforce the award and are also bound by it. The arbitration agreement is enforceable by or against the legal representative of a deceased party provided the right to sue in respect of the cause of action survives.

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27. We are of the opinion that in view of the provisions of Section 46 read with Section 48 of the Partnership Act as well as Section 40 of the Arbitration and Conciliation Act, 1996, the application for appointment of an arbitrator under the arbitration clause of the partnership deed was liable to be allowed and the learned Chief Justice has erred in overlooking the said provisions. While right to sue for rendition of accounts of partnership firm survives on the legal representative of a deceased partner, he is also entitled to invoke the arbitration clause contained in the partnership deed.

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29. As already stated, it was not legally essential to specifically make a mention that the partners included their legal heirs, representatives, assigns or legatees, etc. and the arbitration clause could be invoked by the appellant as the legatee as well as the legal heir/legal representative of the deceased Dulari Devi particularly where the dispute had arisen during her lifetime. The appellant's claim in the instant case is based on the will as well as being a legal heir of the deceased Dulari Devi. The appellant, in our opinion, possessed a legal and enforceable right to invoke arbitration clause and move application under Section 11 of the Arbitration Act before the High Court for appointment of arbitrator. The word “party” as used in the partnership deed does not exclude inclusion of legal heirs, legal representatives, etc. as being canvassed by the respondents. Thus, in our opinion, in view of the provisions of Sections 40 and 46 of the Partnership Act read with Section 40 of the Arbitration Act, the appellant has a legal right to commence arbitration by moving an application under Section 11 of the Arbitration Act in the High Court as in our view, the right to sue survives on him as legal representative of the deceased Dulari Devi and he is entitled to invoke Clause 13 of the partnership deed. Moreover, the dispute referable to arbitration had already arisen during the lifetime of Dulari Devi which is also well settled that where a dispute is referable to arbitration, the parties cannot be compelled to take recourse to in the civil courts.”

(Emphasis supplied)

9. In **Jyoti Gupta v. Kewalsons & Ors.**, reported in **2018 SCC OnLine Del 7942**, the High Court of Delhi also held that an arbitration agreement does not stand discharged on the death of a partner and it can be enforced by the legal heirs of the deceased-partner. It categorically held that merely because the arbitration agreement refers to the disputes between ‘partners’, it cannot bar the legal heirs from seeking their remedies by virtue of the arbitration agreement. The relevant observations are reproduced hereinbelow: -

“12. A reading of the above judgments would clearly show that it is no longer res integra that upon death of a partner, the arbitration agreement between the partners shall survive and can be enforced by the legal heirs of the deceased partner. Whether upon the death of a partner, the surviving partners were under an obligation to induct one of the legal heirs of the deceased partner or not into the partnership as also whether such decision can be challenged by the legal heirs, and in case the legal heirs accept the decision of the surviving partners not to induct any legal heirs of the deceased partner into the partnership, what would be the effect, are all questions to be determined by the Arbitral Tribunal constituted in terms of the arbitration agreement between the parties. Further, merely because the arbitration agreement refers to the disputes between ‘partners’, the same cannot debar or take away the right of enforcement of such an arbitration agreement vested in the legal heirs of the deceased partner in view of Section 40 of the Act.”

(Emphasis supplied)

10. It is a well-established position of law that the term ‘partners’ extends to and would include their legal heirs, representatives, assigns or legatees, etc. Persons claiming under the rights of a deceased person are the representatives of the deceased party, and therefore, both the parties to the agreement and their legal heirs are entitled to enforce an arbitral award and are bound by it. In light of Section 40 of the Act of 1996 the existence of an arbitration agreement is not affected by the death of a party to the arbitration agreement. As a consequence, the right to sue for rendition of account also survives, ensuring that the legal representatives can assert or defend claims arising from the partnership agreement.

11. Applying the above exposition of law in the facts of the present case, since the legal heirs of the deceased partner, namely, Sampat Lal Verma, have stepped into the shoes of the deceased, clause 15 of the partnership agreement will operate to bind both the petitioners and the respondents.

12. For all the aforesaid reasons, we have reached the conclusion that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned judgment.

13. As a result, the special leave petition stands dismissed. Parties shall bear their own costs. Pending application(s), if any, stand disposed of.