

ARB-241-2022 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(231)

**ARB-241-2022 (O&M)
RESERVED ON 19.11.2024
DATE OF DECISION:- 07.01.2025**

PRIKSHIT WADHWA AND ORS**...PETITIONERS****VERSUS****VINOD K WADHWA****...RESPONDENT****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Dheeraj Mahajan, Advocate
for the petitioners.

Mr. Vaibhav Sehgal, Advocate
for the respondent.

SUVIR SEHGAL, J.

1. This petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”) to adjudicate the disputes and differences between the parties.

2. Mr. Dheeraj Mahajan, counsel for the petitioners has submitted that petitioner No.1 is the son of petitioner No.2, who is the brother of the respondent. M/s V. Wadhwa & Co., a Chartered Accountancy firm, petitioner No.3, was started by them by way of a partnership. An Instrument of Partnership dated 01.05.2019, Annexure P-1, was executed and Clause 30, thereof, provided for the resolution of disputes through the medium of arbitration. Petitioner No.1 was partner to the extent of 30%, whereas petitioner No.2 and the respondent were partners to the extent of 35% each. He alleges that the respondent committed various acts detrimental to the



interest of the firm and started a proprietorship CA firm with a similar name. When the petitioner protested, by notice dated 27.04.2022, Annexure P-2, respondent dissolved the firm without settling the accounts. Petitioner responded by sending a reply dated 29.04.2022, Annexure P-3, and as disputes arose between the parties, he served a legal notice dated 08.05.2022, Annexure P-5, invoking the arbitration clause. Vide communication dated 11.05.2022, Annexure P-6, respondent stated that the arbitration clause cannot be invoked as the partnership firm stands dissolved. Respondent filed a suit for rendition of accounts, Annexure P-7 and petitioner filed an application under Section 8 of the Arbitration Act for referring the dispute to the Arbitrator, which are pending. Counsel asserts that the dispute between the parties deserve to be resolved by referring the matter for adjudication to an Arbitrator.

3. Upon notice, petition has been contested by the respondent by filing a reply stating that the petitioners had filed a petition under Section 9 of the Arbitration Act, which was withdrawn on 30.05.2022, Annexure R-1, by recording a statement that they have availed an appropriate remedy. An objection has been taken that present petition is not maintainable as a civil suit is pending between the parties and by interim order dated 16.06.2022, Annexure R-2, petitioners have been restrained from continuing the profession in the name of the partnership firm and from using the assets of the firm or from transferring its funds. It has been averred that as the petitioners have violated the injunction order, a contempt petition has been filed and an FIR, Annexure R-6, has also been registered against them. A stand has been taken that as partnership firm stands dissolved, the arbitration



clause, which forms a part of the Instrument of Partnership cannot be given effect to. Although, it has not been objected to in writing, but Mr. Vaibhav Sehgal, counsel for the respondent has argued that the notice invoking the arbitration clause has been served only by petitioner No.2 and as there is no notice by petitioner No.1, instant petition at their hands is not maintainable.

4. I have heard counsel for the parties and considered their rival submission, besides examining the documents placed on the record.

5. At the outset, the Court would deal with the objection regarding the non-service of notice served by petitioner No.1. It is apposite to notice that the provision as laid down and Section 21 of the Arbitration Act, which is reproduced as under:-

“21. Commencement of arbitral proceedings - Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

6. From a perusal of the above reproduced statutory provision, it is evident that the provision has been incorporated primarily with the objective of determining the date of the commencement of the arbitral proceedings. The proceedings are deemed to have been initiated from the date the notice invoking the arbitration clause “is received by the respondent”. The clause does not require the notice to be served by all the parties to the agreement. Notice by one of the parties to the agreement would be a sufficient compliance of the statutory provision. The giving of such a notice is purely procedural and not a decisive step. Its form and terms do not call for a strict scrutiny. Technicality cannot be attached with a notice served under Section 21 of the

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Arbitration Act as that would defeat the objective of the statute, which provides for a speedy resolution of the disputes. The notice, Annexure P-4, is held to be valid and in the opinion of the Court, it meets the mandate of statutory provision.

7. The answer to the other objections raised by the respondent lies in the judgment rendered by the Supreme Court in **Ravi Prakash Goel Versus Chandra Prakash Goel and another, (2008) 13 SCC 667**. Holding that the legal representative of a deceased-partner has a right to enforce an arbitration agreement, Supreme Court held that on the dissolution of a partnership firm, the arbitration clause does not come to an end. It was further held that the dispute relating to the accounts of a partnership firm is a dispute, which touches the affairs of the firm and is clearly referable to an Arbitrator and the parties cannot be compelled to take a recourse to the civil courts. Interpreting various provisions of the Partnership Act, 1932, Supreme Court observed as under:-

“21. We have already extracted Sections 46, 47 & 48 of the Partnership Act. Section 46 provides two things, namely, first is to realize the assets of the business and then to apply the same for discharge of liabilities and finally to distribute the surplus, if any, among the partners. All that Section 46 empowers is that every partner shall claim that this is to be done for ultimate distribution of the surplus to the partners according to their shares. A suit to enforce the latter right relating to the distribution of surplus is generally called a suit for an account which means account taken up accordingly. This right to a partner to file a suit for account is not affected by the fact that the retiring partner has already inspected the accounts of the firm. Section 46 is, however, merely declaratory of the rights of the partners or



their legal representatives in the surplus and does not set out the mode of calculating the surplus. The share of a partner upon the winding up of a dissolved firm, is only in the residue which is left after the liabilities mentioned in the various clauses of Section 48 have been paid out. Payment of capital and advances to partners is not out of the residue. The amount paid as capital investment to a partner will have to be deducted in order to find the value of the residue, because the value of a partner's share is only his proportion of the residue.”

XXXXX

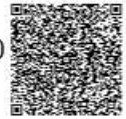
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“27. We are of the opinion that in view of the provisions of Section 46 read with Section 48 of the Partnership Act as well as Section 40 of the Arbitration and Conciliation Act, 1996, the application for appointment of an arbitrator under the arbitration 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.”

8. Pendency of a civil and criminal litigation *inter se* partners, cannot estop one of the partners from invoking the arbitration clause or bar the reference of dispute for adjudication to an arbitrator for determination. In view of the settled legal position, prayer made in the petition deserves to be acceded to.

9. Petition is allowed. Mr. Ravinder Kumar Kaushik, IAS (Retd.), resident of House No. 711, Sector 40-A, Chandigarh, (2nd address – House No. 5524, Sector 38-W, Chandigarh) Mobile No. 9814001762, is nominated

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as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

10. Parties are directed to appear before the Arbitrator on 20.01.2025, at 12:00 P.M., at the address mentioned above or at any other place, time or day fixed by the learned Arbitrator.

11. Liberty is granted to the parties to request the Arbitrator to hold the arbitral proceedings at Amritsar for which the necessary expenses shall be borne by the parties in equal share.

12. Fee shall be paid to the Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.

13. Learned Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Arbitration Act.

14. Parties will be at liberty to raise all the claims, counter claims, defences, pleas etc. before the Arbitrator.

15. Needless to mention that all the questions arising between them in this matter will remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.

16. A request letter along with a copy of this order be sent to Mr. Ravinder Kumar Kaushik, IAS (Retd.).

17. Pending application(s), if any, shall also disposed off.

(SUVIR SEHGAL)
JUDGE

07.01.2025
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Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No