

Reserved on 15.07.2025

Delivered on 23.07.2025

Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 302 of 2024

Appellant :- Messrs Law Publishers and another

Respondent :- Sri Virender Sagar and 3 others

Counsel for Appellant :- Abhishek Ghosh, Kartikeya Saran, Priyanka Midha, Ram M. Kaushik, Saurabh Raj Srivastava

Counsel for Respondent :- Vinay Kumar Mishra, Ankur Azad, Mayank Singh, Prem Shanker Mishra, Shashwat Anand, Vinay Kumar Mishra, Vinod Kumar Singh (Sr. Adv.)

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

(Per: Kshitij Shailendra, J.)

Re: Defect in Appeal

1. A defect has been reported by the Stamp Reporting Section on account of non-filing of certified copy of the formal order. An application seeking exemption from filing the same has been moved on behalf of the appellants.
2. For the reasons stated in the application supported by affidavit, exemption as prayed for is granted. The defect, accordingly, stands removed.

Re: Appeal

3. Heard Ms. Priyanka Midha along with Shri Abhishek Ghosh and Shri Ram Kaushik, learned counsel for the appellants, Shri Vinod Kumar Singh, learned Senior Counsel, assisted by Shri Vinay Kumar Mishra and Shri Ankur Azad Advocates for the respondents and perused the material available on record.

4. The present appeal under Section 37 of the **Arbitration and Conciliation Act, 1996** (in short ‘the Act, 1996’) has been filed by the applicants of Arbitration Case No. 54 of 2023 challenging the order dated 25.07.2004, whereby the Commercial Court, Prayagraj has rejected their application seeking certain interim reliefs under Section 9 of the Act, 1996.

5. There is no dispute between the parties that, till today, Arbitrator to adjudicate the disputes and differences between the parties has not been appointed and an application under Section 11 of the Act, 1996 moved in that regard is pending consideration before this Court.

BRIEF FACTS

6. The dispute between the parties is in relation to a partnership business being carried out in the name and style of ‘Messers Law Publishers’ at Allahabad. The parties to the litigation are close relatives. It was alleged in the application under Section 9 of the Act, 1996 that late R.G. Sagar and late B.L. Sagar had decided to run a partnership business of publication and sale of law books. These two persons formed a partnership firm having partners, namely, R.G. Sagar, B.L Sagar, Virendra Sagar, Smt. Kamlesh, Smt. Shakti Sudha and Smt. Vibha. The first partnership deed on record is dated 01.04.1976 having disclosure of the said partners.

7. Shri B.L Sagar died on 15.04.1996 and it is alleged that the very next day, i.e. on 16.04.1996, another partnership deed was executed inducting Shri Naresh Sagar in place of late B.L. Sagar. The appellant no. 2 (in short 'the appellant'), namely, Smt. Vibha, claiming herself to be a sleeping partner in the firm, stated in her application that the partnership was 'at Will'; that Shri R.G. Sagar died on 09.01.1999; that another partner, namely, Smt. Kamlesh, died on 20.11.2017; that another partner Shri Subhash died on 20.05.2021 and when the appellant was informed by her few relatives at Allahabad that the respondents were trying to alienate immovable properties of the firm, being property No. 34/18-A, Sardar Patel Marg (Zone 03) and Old House No. 17/10E/1, (Zone 03) (New House No. CLA-B-464, Bhagwan Ram Mandir Marg, Allahabad), she sent a registered notice dated 21.10.2023 to the defendants questioning their act with a further request to the Sub-Registrar, Allahabad not to register any deed or allow transfer of properties without deciding the objections raised by the appellant.

8. It was further alleged in the application that the partnership deeds of 1976 and 1996 had been kept in the registered office of the firm at Sardar Patel Marg, Civil Lines, Allahabad and that a bank account was opened in the year 1983 in the Bank of Rajasthan, which was, later on, taken over by ICICI bank and names of all the partners, including the appellant, were recorded as partners of the firm in the bank records.

9. The cause of action giving rise to filing of the application was said to have arisen, firstly on 20.11.2017 on death of partner Smt. Kamlesh and her share having not been settled, rather usurped by defendants No. 1 to 3; secondly, on 20.05.2021, on death of partner Subhash Sagar and the defendant no. 4 having started

claiming property of the firm to be personal property of Subhash Sagar and Shakti Sagar; thirdly, in the month of January, 2023 when immovable properties of the firm were rented out and rent was disbursed amongst defendant nos. 1 to 3 and; lastly, in the month of October, 2023 when defendant nos. 1 to 3 refused to settle claim of the appellant and tried to alienate/convert/transfer properties of the firm in their personal names.

10. The application under Section 9 contained three prayers; the first one in the nature of temporary injunction prohibiting the defendants from misappropriating the money/assets/securities of the firm and from transferring/alienating/ pledging/selling/creating third party interest therein; secondly, a direction was sought for defendant nos. 1 to 3 to deposit in the Commercial Court the rent received by them from immovable properties of the firm and; thirdly, a direction was sought to the defendants to supply partnership deed dated 16.04.1996 along with other partnership documents to the appellants.

11. The application was opposed by the respondents terming the appellant to be a total stranger for the last 27 years having no concern with the firm. It was further alleged in the objections that the appellant had retired from the firm on 15.04.1996 and transferred her share to her Devar Shri Naresh Sagar; that a fresh partnership deed was executed on 16.04.1996 having partners, namely, R.G. Sagar (25% share), Virendra Sagar (25% share), Smt. Kamlesh (15% share), Smt. Shakti Sudha (20% share) and Naresh Sagar (15% share); that on death of R.G. Sagar, which took place on 09.01.1999, Smt. Shakti Sudha retired from the firm, whereafter the old partnership was dissolved and new partnership deed came into existence on 12.01.1999 with description of respective shares

of the partners. It was further stated that Smt. Kamlesh retired from the firm on 31.03.2014 which necessitated formation of a new partnership and, accordingly, a fresh partnership deed was executed on 01.04.2014 describing respective shares of the concerned partners; that Subhash Sagar died on 10.05.2021 and a new partnership deed dated 13.07.2021 was executed describing respective shares of the concerned partners.

12. The respondents termed the partnership deed dated 16.04.1996, the one relied upon by the appellants, to be a forged and fabricated document and not bearing signatures of all the partners, however, the respondents relied upon another partnership deed of the same day, i.e., on 16.04.1996 (other than the one of the same date relied upon by the appellants) describing shares of R.G. Sagar (25%), Virendar Sagar (25%), Smt. Kamlesh (15%), Smt. Shakti Sudha (20%) and Naresh Sagar (15%).

13. In sum and substance, the objections of the respondents were to the effect that, after the appellant had retired from partnership firm and its business on 15.04.1996 as per her sweet will and transferred her respective share in favour of Naresh Sagar, she ceased to have any right qua partnership firm or its business and, consequently, any claim raised by her after a period of 27 years had no legs to stand on.

14. The Commercial Court, after considering the material on record and the submissions raised before it, rejected the application by observing that the reliefs claimed by the appellants, i.e. for issuance of a direction to deposit the rent received from immovable properties of the firm in the court and a further direction to the respondents to supply partnership deed dated 16.04.1996 along with other documents, being in the nature of final reliefs, the same

cannot be granted at interim stage. It is further recorded in the order impugned that the appellant did not succeed to prove prima facie case, balance of convenience and irreparable loss in her favour.

PREVIOUS PROCEEDINGS IN THIS APPEAL

15. There is no dispute between the parties that the partnership firm, either initially or after amendments in the partnership deed were made in terms of execution of various partnership deeds from time to time, was never registered. We noted this fact in our order dated 24.01.2025 and, during the course of hearing, necessity to examine the position as regards distribution of profits, pre and post 16.04.1996, was also felt and, therefore, the Court, by an order dated 06.02.2025, directed the respondents to place on record material to indicate the same.

16. Pursuant to the above, a supplementary counter affidavit dated 03.03.2025 was filed on behalf of the respondents annexing therewith balance sheets of financial years 1993-94 and 1994-95 and then w.e.f. 2002-03 to 2006-07 and, then, of financial years 2017-18, 2021-22 and 2022-23.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

17. Learned counsel for the appellants has vehemently argued that the Commercial Court failed to peruse the entire relief clause contained in the application under Section 9 and, after discussing only second and third prayers, illegally rejected the application ignoring the first prayer made therein and, therefore, the order impugned is based upon misreading of the application itself.

18. Further submission has been made that the appellant was continuing as a sleeping partner since 1976 and the entire story cooked up by the respondents as if she stood retired from the firm

or ever transferred her share in favour of Naresh Sagar or resigned, was wholly concocted so as to usurp her share in the property and deprive her of profits in the partnership business. It is further urged that the appellant was having only 11% share in the firm and, therefore, the defence set up by the respondents as if she had transferred her 15% share in favour of Naresh Sagar, is thoroughly misplaced. Further submission is that, after the death of Shri B.L. Sagar on 15.04.1996, a new partnership deed was executed on 16.04.1996 in which, though Naresh Sagar was inducted as a partner, the appellant continued to remain a partner having increased share of 13.33% and another deed of the same date, i.e. 16.04.1996, relied upon by the respondents, is fabricated and manufactured by them by incorporating an incorrect recital regarding alleged retirement of the appellant from the firm w.e.f. 15.04.1996.

19. It is further submitted that the respondents took inconsistent pleas as regards alleged ouster of the appellant from the firm, that is to say that somewhere they stated that the appellant retired from the partnership firm as per her sweet will, somewhere their stand is that she transferred her share in favour of Naresh Sagar and, that too, over and above her 11% share and somewhere they stated that the appellant had tendered her resignation by her own free will on 15.04.1996. Submission is that all the three different and inconsistent pleas have different significance under the partnership law and no evidence was led by the respondents to substantiate either of the alleged modes of cessation/ouster of appellant from the firm, that is to say that no document was produced by them to demonstrate either retirement or resignation of or transfer of share by the appellant and, therefore, the entire defence has no substance.

20. By referring to Section 32(c) of the **Partnership Act, 1932** (in short ‘the Act, 1932’), submission has been made that in case a partnership is at will, a partner may retire only by giving notice in writing to all other partners of his intention to retire but, in the present case, no such notice has been brought on record by the respondents. Section 37 of the Act, 1932 was also pressed into service and submission was made that if plea of ouster of the appellant by any mode, as alleged by the respondents, is accepted, burden to establish that accounts of the outgoing partner (appellant) were ever settled, would lay upon the respondents but the same has not been discharged by them. On the same line, reference was made to Section 112 of **BHARTIYA SAKSHYA ADHINIYAM, 2023** and submission was made that when a question arises as to whether persons are partners and they have been acting as such, the burden of proof that they do not stand or have ceased to stand to each other in such relationship, is on the person who affirms it. It is, therefore, argued that once there is nothing on record to demonstrate either retirement or resignation or transfer of share or settlement of accounts or any notice showing her intention to quit, the status of the appellant as partner in the firm would continue to subsist in law as well as on facts and, therefore, the application under Section 9 was bound to be allowed.

21. By referring to the documents appended alongwith the supplementary counter affidavit, it is submitted that the name of appellant stands reflected from various financial statements after 1996-97 and, therefore, it cannot be accepted that the appellant ever retired or resigned from the partnership firm or its business.

22. In support of her submissions, Ms. Midha has placed reliance upon judgment of Hon’ble Supreme Court in **Pamuru Vishnu**

Vinodh Reddy Vs. Chaillakuru Chandrasekhara Reddy : (2003)

3 SCC 445, especially paragraph no. 12 thereof, and submission has been made that if a plea of retirement is taken by any partner of a partnership firm, it has to be established that value of the share of the outgoing partner has been paid, otherwise it would become a debt on the person who asserts retirement of the outgoing partner who would be entitled to recover the same.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

23. Per contra, learned Senior Counsel appearing for the respondents submits that the application under Section 9 of the Act, in itself, was not maintainable for two basic reasons; firstly, that such an application can be filed only by a party to the dispute but the appellant, not being a partner in the firm, is not a party, and, secondly, by referring to the partnership deed dated 16.04.1996 (at page 85 of the paper book), relied upon by the appellant, it is submitted that since it did not bear signatures of the appellant, the same could not form basis of instituting proceedings under Section 9, inasmuch as Section 7 (4) (a) of the Act, 1996 mandates that a document containing arbitration agreement has to be signed by the parties.

24. It is further contended that the appellant was nowhere in picture after she had left as a partner w.e.f. 15.04.1996 and in any of the partnership deeds having come in existence on 16.04.1996, 12.01.1999, 01.04.2014 and 13.07.2021, her name does not find mention as a partner nor was there any occasion to incorporate her name as a partner after her cessation from the partnership firm. It is further submitted that the claim raised after 27 years in the year 2023 is wholly untenable and, even otherwise, barred by limitation.

25. Although, according to the respondents, a partnership deed dated 16.04.1996 had come in existence, a serious dispute has been raised regarding genuinity of the deed of the same date, as relied upon by the appellants and it is contended that the recital regarding retirement of the appellant w.e.f. 15.04.1996, as contained in the genuine partnership deed dated 16.04.1996, was removed by her and, therefore, no relief can be pressed on the basis of a forged document.

26. It is also submitted that, pursuant to a family arrangement, copyrights in certain law books were transferred to Delhi Law House (D.L.H.) controlled by family members of the appellant and the said business at Delhi is in her control under the said arrangement but she, having an evil eye over the properties of the firm at Allahabad and its business, instituted a false claim with no explanation of her unreasonable silence over a period of 27 years. Section 42(c) of the Act, 1932 was also pressed by learned Senior Counsel contending that a firm is dissolved on death of a partner and, in the present case, deaths of partners continued to occur from time to time and, on every death, a new partnership deed was executed on account of dissolution of the firm existing prior to such death and, therefore, the appellant being a stranger to all the partnership deeds executed over a period of more than two decades, has no locus standi to claim any relief.

27. As regards the statements annexed alongwith the supplementary counter affidavit, submission has been made that the entries in the name of appellant at page nos. 88, 99 and 108 of the said affidavit indicate only this much that unsecured loan to the tune of Rs. 1,50,373.73 was reflected as against her name, which figure never vary with the passage of time. Submission is that any

entry reflecting unsecured loan in the name of the appellant does not infer that profits were ever shared with her and, in case, the appellant wants to agitate her claim in relation to unsecured loans, she may do so by instituting separate proceedings but such entries cannot be a ground to grant interim reliefs, as prayed for.

28. In support of his submissions, learned senior counsel has mainly placed reliance upon the judgment of Hon'ble Supreme Court in **Gattulal Vs. Gulab Singh and another: AIR 1985 SC 547**, on the proposition that laches on the part of plaintiff would disentitle him to claim interim equitable relief.

DISCUSSION AND FINDINGS

29. We have considered the submissions advanced on behalf of the parties and have perused the material available on record.

30. The claim for interim reliefs, as raised by the appellant, is based upon the plea that she neither retired nor resigned from the partnership firm nor did she ever transfer her share in favour of Naresh Sagar and, therefore, she still continues to be a partner in the firm and, hence, has a right to claim interim reliefs, as prayed. Though disputes have been raised by both sides as regards genuineness of two different partnership deed(s) dated 16.04.1996 produced by both sides, raising allegations of making fabrication/forgery/manipulation therein, at this stage we need not record a finding to that effect in these proceedings as the scope of the present appeal is confined to examine as to whether the appellant is entitled to claim interim reliefs. There is neither any reliable documentary nor oral evidence before us to arrive at a definite conclusion as to which of the two deeds is genuine one and, hence, any observation made in this order may not be treated as a conclusive opinion in that regard.

31. We find that though no document has been produced by the respondents by which either resignation or retirement of or transfer of share by the appellant could be reflected, there are certainly three partnership deeds dated 12.01.1999, 01.04.2014 and 13.07.2021 wherein the name of the appellant does not find mention as a partner. It is nobody's case that the partnership business ever came to an end or that the firm or its business was ever wound up. Admittedly, the appellant is also managing business of same or similar nature in Delhi and since the parties belong to the same family, it cannot be believed that the appellant was not aware of the running business of the partnership firm at Allahabad or recurrences of profits or losses, as the case may be.

32. Under the aforesaid circumstances, as to what prevented the appellant to raise a claim as regards profit-sharing in the partnership business over a period of 27 years after 1996, is not reflected from the record. The appellant, being a business personnel having her business at Delhi, must be filing Income Tax Returns but nothing has been brought on record by her to reflect income/profit/loss arising from the disputed partnership business.

33. It is the appellant's case that the dispute arose in the year 2021 and, thereafter, the appellant started agitating her rights. In this regard, when we peruse paragraph no. 46 of the application under Section 9 of the Act, 1996, we find that cause of action was stated to have arisen, firstly on 20.11.2017, secondly, on 20.05.2021, thirdly, in January, 2023 and, lastly, in October, 2023. Be that as it may, a deep slumber of 27 years on the part of the appellant to either know about the profits in the business or raise any claim in that regard, is germane to the claim for interim relief.

34. Significance of a *prima facie* case, being the first and foremost pre-condition to claim interim injunction, has been explained by the Hon'ble Supreme Court from time to time. In **Dalpat Kumar and another Vs. Prahlad Singh and others: AIR 1993 SC 276**, the Hon'ble Supreme Court has clearly held that the burden is on the plaintiff to establish by evidence or affidavit or otherwise that there is a *prima facie* case in his favour which needs adjudication at the trial. In the same judgment, importance of balance of convenience and irreparable injury has been emphasized holding that the phrases “*prima facie* case”, “balance of convenience” and “irreparable loss” are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice.

35. In **Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd: AIR 1999 SC 3105**, the Hon'ble Supreme Court has held that while dealing with the matter of injunction, the Court should not ignore the factum of strength of one party's case being stronger than the others and no fixed rules or notions can be made in such matters and the claim has to be seen on the facts and circumstances involved therein. Significance of balance of convenience or inconvenience was also stated to be a serious question corresponding to *prima facie* case.

36. In **Gattulal (supra)** following passage from Lindley on Partnership, 12th edition was extracted:-

“Independently of the Statutes of Limitation, a plaintiff may be precluded by his own laches from obtaining equitable relief. Laches pre-supposes not only lapse of time, but also the existence of circumstances which render it unjust to give relief to the plaintiff; and unless

reasonable vigilance is shown in the prosecution of a claim to equitable relief, the Court, acting on the maxim *vigilantibus non dormientibus subveniunt leges*, will decline to interfere.”

37. After extracting the above passage, the Hon’ble Supreme Court held as under :-

“The doctrine of laches is of great importance where persons have agreed to become partners, and one of them has unfairly left the other to do all the work, and then, there being a profit, comes forward and claims a share of it. In such cases as these, the plaintiff’s conduct lays him open to the remark that nothing would have been heard of him had the joint adventure ended in loss instead of gain; and a court will not aid those who can be shown to have remained quiet in the hope of being able to evade responsibility in case of loss, but of being able to claim a share of gain in case of ultimate success.”

38. The Hon’ble Supreme Court, in **State of Maharashtra Vs. Digamber: AIR 1995 SC 1991**, has held that laches or undue delay disentitles a person to obtain discretionary equitable relief. In **Prabhakar Vs. Joint Director Sericulture Department and others: (2015) 15 SCC 1**, the Hon’ble Supreme Court held as under :-

“It is now a well recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases Courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities".”

39. We find in the present case that unreasonable and unexplained delay of about 27 years in approaching the Court claiming interim reliefs, reflects non-existence of *prima facie* case in favour of the appellant. Since the business is being admittedly

run without any involvement of the appellant therein, her ‘surprise appearance’ on the scene, immediately when certain properties were allegedly sought to be transferred by the partners, leads us to hold that balance of convenience is also not in favour of the appellant.

40. As far as the third ingredient, i.e. irreparable injury, is concerned, since we are not examining the issue of appointment of Arbitrator in these proceedings nor is before us any civil suit wherein the appellant may or may not otherwise get a declaration of her rights or status as that of a partner, we find, at this stage, that even if immovable properties of the partnership firm are alienated and monetary benefits arising therefrom are gained and received by the respondents, the appellant would not suffer ‘irreparable injury’ worth the name. We observe so because, in case, the appellant, in any proceedings, is able to establish her rights and status as that of a partner or even a co-sharer in immovable properties, she may have a right to get her pecuniary share in the monetary gains and the said right, if established, would not be defeated merely because the property is being or has been alienated at the instance of remaining partners.

41. As far as entries in certain schedules reflecting unsecured loan against the name of the appellant are concerned, though the statements are of the decades of 2000, 2010 and 2020, the same, in themselves, are not a conclusive evidence, at this stage, to establish that the appellant continues to be a partner in the firm after 1996, particularly when, in the subsequent partnership deeds dated 12.01.1999, 01.04.2014 and 13.07.2021, her name is not reflected as a partner. Further, in none of the balance sheets or trading and profit and loss accounts, the name of appellant stands reflected. We

find no merit in the submission made by learned counsel for the appellant that everything over many decades was done behind her back so as to usurp her share as the claim raised by her is highly belated and has serious lapses and unfilled gaps.

42. Now coming to the order impugned before us, we find that one of the reasons assigned by the Commercial Court while rejecting the application under Section 9, is that the interim reliefs have been claimed in the nature of final reliefs. The said observation is mainly as regards the second prayer made in the application, whereby the appellant had sought a direction for the respondents to handover partnership deed dated 16.04.1996 and other documents relating to the partnership. According to the appellant, the said prayer was made corresponding to the pleadings contained in the application, whereby the stand taken was that the said partnership deed had been kept in the registered office of the partnership firm at Allahabad and whatever copy of the deed was available with her, the same was filed before the Commercial Court. Here, the Court finds substance in the submissions advanced on behalf of the respondents to the effect that, in case, the partnership deed itself is not in possession of the appellant, the claim raised under Section 9 on the basis of a deed which was not even signed by the appellant herself, is not tenable.

43. The aforesaid aspect of an unsigned deed may have a bearing on other proceedings in relation to pending application under Section 11 of the Act, 1996 or any other proceedings, if instituted; however, we are not inclined to form any conclusive opinion in that regard and, at this stage, our discussion is confined only with regard to grant or denial of an interim relief to the appellant in the totality

of the facts and circumstances, as they exist as on today and are reflected from record.

44. There may also be a question of period of limitation as regards instituting the proceedings under Section 9 of the Act, 1996 and, irrespective of applicability of Article 5 or Article 137 of the Schedule contained under the Limitation Act, 1963, as argued by both sides, we are not commenting upon the same as any observation made in that regard may prejudice other proceedings. We are deciding this appeal only on the strict parameters of three basic ingredients on which the claim of interim injunction rests and on no other point.

CONCLUSION

45. Once it is not established on record as to what triggered the claim for interim injunction by the appellant in the year 2023 after deep slumber of 27 years since after 1996, though she tried to correlate the same with respondents' intention to transfer the properties, irrespective of merits or demerits of the respective cases of the parties in proceedings for appointment of an Arbitrator under section 11 of the Act, 1996, we are not inclined to grant any relief to the appellant in so far as the proceedings under Section 9 of the Act are concerned and reject her claim for aforesaid reasons in addition to those recorded by the Commercial Court in the order impugned.

46. Consequently, the appeal has no merit and is, accordingly, **dismissed**.

47. We make it clear that we have neither adjudicated the validity of either of the two partnership deeds dated 16.04.1996, as relied upon by both sides, nor would any finding recorded in this order be

treated as a conclusive opinion regarding validity of the proceedings under Section 11 of the Act, 1996 or qua any other rights which the parties may claim in any other proceedings. The law will take its own recourse in relation to the proceedings pending or which may be instituted.

Order Date :- 23.7.2025

AKShukla/-

(Kshitij Shailendra, J) (Arun Bhansali, CJ)