

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

AC No. 1 of 2024

(MAHESH PATEL Vs YASHWANT NETRAM AND OTHERS)

Appearance:

Shri Prateek Maheshwari - Advocate for the applicant.

*Shri Avadhesh Polekar – Advocate for the non-applicant Nos.1
and 2.*

Shri Nitin Phadke – Advocate for non-applicant No.3.

Reserved on : 28.11.2024

Pronounced on : 06.01.2025

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*This arbitration case having been heard and reserved for
orders, coming on for pronouncement this day, the court passed the
following:*

ORDER

1] Heard.

2] This application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short ‘the Act of 1996’) has been filed by the applicant, one of the partners of a partnership firm M/s. P. N. Builders and Developers, for appointment of Arbitrator to settle the dispute between the parties.

3] The case of the applicant is that a partnership deed dated 15.07.2010 was executed between the applicant and the non-applicants in the name and style of M/s. P. N. Builders and Developers. The aforesaid partnership firm was formed for the

purposes of dealing in lands and immovable properties, buying, selling and developing the same, and for other allied purposes.

4] According to the applicant certain disputes have arisen between the parties, which led the applicant to issue a legal notice dated 03.03.2022, asking the non-applicants to close the bank accounts and to restrain from dealing with the land of the partnership firm. However, as the aforesaid notice was not responded to by the non-applicants, a notice dated 16.11.2023, for appointment of arbitrator was also issued by the applicant through his Counsel wherein the applicant had also suggested the certain names one of whom could be appointed as the sole Arbitrator for settlement of disputes between the parties as is prescribed in Clause 16 of the Partnership Deed. However, as the aforesaid notice was also not replied to by the non-applicants, the present application has been filed.

5] Counsel for the applicant has submitted that various disputes have arisen between the parties as have been raised in the notice of arbitration dated 16.11.2023, and since the non-applicants have also not shown any interest in the appointment of the sole Arbitrator, despite five names were recommended by the applicant, the Arbitrator may be appointed by this Court only.

6] The prayer is vehemently opposed by the counsel for the non-applicants. A reply to the application has also been filed by the non-applicant No.3, which has also been adopted by the non-

applicant Nos.1 and 2 as informed by their counsel Shri Avdesh Polekar.

7] In this reply, the non-applicant No.3 has taken various grounds for not entertaining the present application, including that of, i) the locus of the applicant, and ii) the invocation of the arbitration clause against one Ashok Patel, against whom, it is alleged that he is running the firm without any legal basis, and iii) the claim of the applicant is stale and is barred by limitation also, as also iv) the relief of declaration that any sale made without the consent and permission of the applicant, is *void ab initio*, is a declaratory relief, cannot be granted by the Arbitrator, and finally v) that the applicant has also sought the dissolution of the partnership firm, which falls under the jurisdiction of the 'Court' only and cannot be ordered by the Arbitrator in terms of the provision of Section 44 of the Indian Partnership Act, 1932. Counsel has also relied upon Article 137 appended to the Indian Limitation Act, 1963 and has drawn the attention of this Court to para 7.7 and 7.10 of the application.

8] Shri Nitin Phadke, learned counsel for the non-applicant No.3 has submitted that there are certain matters, which can only be decided by the Civil Court only, including that of fixing the responsibility of Ashok Patel, against whom the allegations have been levelled, but who is not a party to the partnership firm, and the fact that the dissolution of a partnership firm can only be done by a Court of competent jurisdiction. He has also relied upon a

decision rendered by the Supreme Court in the case of **Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and another** reported as **AIR 2003 SC 2252**. Shri Phadke has also relied upon another decision of Supreme Court in the case of **M/s. B and T AG vs. Ministry of Defence** passed in **Arbitration Petition (C) No.13 of 2023**, relevant para 61 to buttress his arguments that the application is barred by limitation.

9] However, Shri Phadke has also submitted that in case, if this Court comes to a conclusion that the Arbitrator is required to be appointed, then he has no objection in the name of Shri Sunil Jain – Senior Advocate which has also been suggested by the applicant.

10] Shri Prateek Maheshwari, learned counsel for the applicant, in rebuttal, has relied upon the decision rendered by the Supreme Court in the case of **M/s. Arif Azim Co. Ltd. Vs. M/s. Aptech Ltd.** in **Arbitration Petition No.29 of 2023 dated 01.03.2024** to submit that since the non-applicants have failed to comply with the notice of invocation of arbitration issued by the applicant, it is not hit by limitation. Shri Maheshwari has also relied upon another decision rendered by the Supreme Court in the case of **V. H. Patel & Company and others Vs. Hirubhai Himabhai Patel and Others** reported as **(2000) 4 SCC 368** in support of his submission that an Arbitrator has he powers to dissolve a partnership

11] Heard counsel for the parties and perused the record.

12] So far as the locus of the applicant to file the present application is concerned, it is found that he is also one of the partners of the partnership firm along with the non-applicants hence there is no reason to believe as to why he cannot invoke the arbitration clause.

13] So far as the reliance placed by Shri Phadke in the case **Sukanya Holdings Pvt. Ltd. (supra)** is concerned, to submit that there is a bifurcation of the cause of action, as certain allegations have been made against Ashok Patel also who is not a partner of the partnership firm hence arbitration clause cannot be invoked against him, this Court is of the considered opinion that the grievance of the applicant is that the firm is being managed by Ashok Patel, who happens to be the father of non-applicant No.3, it is a grievance against the non-applicants only, which is also apparent from the notice for appointment of Arbitrator, in which the dispute has been raised against the present non-applicants only and not against Ashok Patel, and in such circumstances, the said Ashok Patel was not a necessary party to be impleaded in the *lis*, and thus, there is no question of bifurcation of dispute, hence, the decisions relied upon by Shri Phadke in the case of **Sukanya Holdings Pvt. Ltd. (supra)** would not be applicable in the facts and circumstances of the case.

14] So far as the question of limitation is concerned, the decision rendered by the Supreme Court in the case of **M/s. Arif**

Azim Co. Ltd. (supra) is concerned, relevant paras read as under:-

“90. The present arbitration petition having been filed within a period of three years from the date when the respondent failed to comply with the notice of invocation of arbitration issued by the petitioner is not hit by limitation.

91. The notice for invocation of arbitration having been issued by the petitioner within a period of three years from the date of accrual of cause of action, the claims cannot be said to be ex-facie dead or time-barred on the date of commencement of the arbitration proceedings.

92. In view of the aforesaid, the present petition is allowed. We appoint Shri Justice Sanjay Kishan Kaul, Former Judge of the Supreme Court of India, to act as the sole arbitrator. The fees of the arbitrator including other modalities shall be fixed in consultation with the parties.”

(Emphasis supplied)

15] Whereas, the relevant para 61 of the decision relied upon by Shri Nitin Phadke in the case of **M/s. B and T AG (supra)**, reads as under:-

“61. The plain reading of the aforesaid letter would indicate that the disputes between the parties had cropped up way back in the year 2014 itself. This is evident by the date 24.10.2014 figuring in the aforesaid letter dated 24.02.2016. The letter indicates that after the disputes arose between the parties, the petitioner tried to offer its explanation and put forward its case vide letter dated 24.10.2014. The respondent by letter dated 24.02.2016 clarified or rather informed the petitioner that the justifications put forward by the petitioner vide its letter dated 24.10.2014 were duly considered and thereafter, a final decision was taken for encashment of the liquidated damages. Therefore, the petitioner is not justified in saying that it continued to negotiate till 2019. The mere bald assertion in this regard is not sufficient as observed by this Court in **Geo Miller (supra)**. The entire history of the negotiation between the parties must be specifically pleaded and placed on record. It is only after the entire history of negotiation is pleaded and placed on record that the Court would be in a position to consider such history so as to find out what was the “Breaking Point” at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for arbitration.”

16] Having considered the record of the case at hand in the light of the aforesaid dictums of the Supreme Court, so far as the objection regarding delay in filing the application for appointment of arbitrator is concerned, it is found that, admittedly, the partnership deed was executed in the month of

July, 2010 however, the business of the firm is an ongoing business in which certain disputes have arisen for which initially a notice on 03.03.2022 was issued by the applicant to the non-applicants asking them to close the bank accounts and to restrain from dealing with the land of the partnership firm, and thereafter another notice for appointment of arbitrator was issued on 16.11.2023, whereas the present application has been filed on 02.01.2024.

17] In the light of the aforesaid decisions, when the facts of the present case are tested, it is found that in the initial notice sent by the applicant to the non-applicants on 03.03.2022, there was no specific date mentioned regarding the cause of action, which may be said to be a cleverly drafted notice not appreciated by this court. However, in the notice for appointment of Arbitrator dated 16.11.2023, the cause of action is stated to be 03.03.2022. It is also found that there is no rebuttal of the aforesaid two notices by the non-applicants, and thus, in the considered opinion of this Court, the question of limitation, which is a disputed question of fact and law, can be tried by the Arbitrator only.

18] So far as the dissolution of the partnership firm is concerned, Shri Maheshwari has relied upon the decision rendered by the Supreme Court in the case **V. H. Patel & Company and others (supra)**, the relevant para 12 of the same reads as under:-

“12. So far as the power of the arbitrator to dissolve the partnership is concerned, the law is clear that where there is a clause in the Articles of Partnership or agreement or order referring all the matters in difference between the partners to arbitration, arbitrator has power to decide whether or not the partnership shall be dissolved and to award its dissolution. (See: Phoenix v. Pope). Power of the arbitrator will primarily depend upon the arbitration clause and the reference made by the court to it. If under the terms of the reference all disputes and difference arising between the parties have been referred to arbitration, the arbitrator will, in general, be able to deal with all matters, including dissolution. There is no principle of law or any provision which bars an arbitrator to examine such a question. Although the learned counsel for the petitioner relied upon a passage of Pollock & Mulla, quoted earlier, that passage is only confined to the inherent powers of the court as to whether dissolution of partnership is just and equitable, but we have demonstrated in the course of our order that it is permissible for the court to refer to arbitration a dispute in relation to dissolution as well on grounds such as destruction of mutual trust and confidence between the partners which is the foundation therefor.”

(Emphasis supplied)

19] In such circumstances, this Court has no hesitation to hold that the Arbitrator would have ample power even to pass an order for dissolution of the partnership firm.

20] In view of the same, the application stands allowed and under the facts and circumstances of the case, I propose to appoint **Shri Sunil Jain, (Senior Advocate of M.P. High Court)** to be the learned Arbitrator for resolving the dispute.

21] Let the declaration in terms of Section 11(8) and 12(1) of the amended Arbitration Act in the prescribed form as contained in the 6th Schedule of the Act be obtained from the proposed Arbitrator by the Principal Registrar of this Court before the next date of hearing.

22] Let the matter be listed on **09.01.2025**.

(SUBODH ABHYANKAR)
JUDGE