

GAHC010187132024



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.A./6/2024

RAMPAT LAL VERMA
S/O LATE SAHINDAR PRASAD VERMA,
RESIDENT OF MEGHALAYA ROAD, DIBRUGARH TOWN, PO, PS AND DIST
DIBRUGARH, ASSAM 786001

VERSUS

RAHUL VERMA AND 7 ORS
S/O LATE SAMPAT LAL VERMA,
RESIDENT OF MEGHALAYA ROAD, DIBRUGARH TOWN, PO, PS AND DIST
DIBRUGARH, ASSAM 786001

2:SMTI MRIDULATA VERMA
S/O LATE SAMPAT LAL VERMA

RESIDENT OF MEGHALAYA ROAD
DIBRUGARH TOWN
PO
PS AND DIST DIBRUGARH
ASSAM 786001

3:SMTI PRIYANKA VERMA
D/O LATE SAMPAT LAL VERMA

RESIDENT OF MEGHALAYA ROAD
DIBRUGARH TOWN
PO
PS AND DIST DIBRUGARH
ASSAM 786001

4:SMTI PREETY VERMA
D/O LATE SAMPAT LAL VERMA

RESIDENT OF MEGHALAYA ROAD
DIBRUGARH TOWN
PO
PS AND DIST DIBRUGARH
ASSAM 786001

5:SMTI. MEENA DEVI
D/O LATE SAHINDAR PRASAD VERMA
W/O LATE NAGENDER PRASAD

VILLAGE PHULTAKIA
PO KESARIYA
DIST EAST CHAMPARAN BIHAR
845424

6:SMTI LAXMI DEVI
D/O LATE SAHINDAR PRASAD VERMA

W/O SRI MOHAN PRASAD SAHU

VASTU VIHAR
PO MUZAFFARPUR DIST MUZAFFARPUR
BIHAR
843113

7:SMTI SANTOSHI DEVI
D/O LATE SAHINDAR PRASAD VERMA

W/O SRI VIJAY KUMAR SIMRA

MANSOORPUR
PO MANSOORPUR
DIST VAISHALI
BIHAR
843101

8:SMTI MAYA DEVI
D/O LATE SAHINDAR PRASAD VERMA

W/O SRI MOHAN LAL PRASAD
NAKCHHED TOLA
HENRI BAZAR
PO MOTIHARI
DIST MOTIHARI
BIHAR
84540

Advocate for the appellant : Mr. P.J. Saikia, Senior Advocate;
Mr. A.K. Gupta.

Advocate for the respondents : Mr. S. Dutta, Senior Advocate;
Ms. S. Mochahari.

Date of hearing : 23.09.2024

Date of judgment : 22.10 2024

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT & ORDER (CAV)

Heard Mr. P.J. Saikia, learned Senior Counsel, assisted by Mr. A.K. Gupta, learned counsel for the appellant and Mr. S. Dutta, learned Senior counsel, assisted by Ms. S. Mochahari, learned counsel for the respondents.

2. This appeal, under Section 37(1)(a) of the Arbitration and Conciliation Act, 1996, is directed against the order dated 09.08.2024, passed by the learned Civil Judge (Senior Division), Dibrugarh, in Misc. (J) Case No. 206/2024, arising out of Commercial Suit No. 02/2024.

3. It is to be noted here that vide impugned order dated 09.08.2024, the learned Civil Judge (Senior Division), Dibrugarh ('trial Court', for short) had dismissed the Petition No. 3608/2024, filed by the appellant/defendant No. 1, under Section 8 of the Arbitration and Conciliation Act, 1996 ('Act of 1996', for short), praying for dismissal of the analogous Commercial Suit by referring the parties to go for arbitration, under Section 8 of the Act of 1996.

4. The background facts, leading to filing of the present appeal, are briefly

stated as under:

“The respondents Nos. 1 to 4 herein as plaintiffs have instituted a Commercial Suit No. 02/2024, against the present appellant and proforma respondents. The claim of the respondents of the aforesaid Commercial Suit is that they are legal heirs and representatives of Late Sampat Lal Verma and that there was a partnership firm in the name and style of M/s Verma Market, which came into existence on 01.04.1984 and thereafter, continued vide deed of partnership, dated 01.04.1992, as per terms and conditions incorporated in the said partnership deed, and that the appellant, along with Lalmati Devi Verma and Sampat Lal Verma, were the partners of the said partnership firm having 1/3rd share each in the said partnership firm and the said firm constructed multi storey RCC buildings on different plots and also own different businesses including Hotel Maurya, and that one of the partners, namely, Lalmati Devi Verma expired on 24.12.2022, and after the death of Lalmati Devi Verma, the partnership firm continued with two partners viz. the appellant and Sampat Lal Verma and since the legal heirs of Lalmati Devi Verma were not interested to take any share in the partnership firm, they relinquished their share in favour of the two continuing partners. Thereafter, Sampat Lal Verma expired on 21.11.2023 and on the demise of Sampat Lal Verma, the partnership firm stands dissolved automatically on 21.11.2023, as one of the two remaining partners expired and that the plaintiffs being the legal heirs of deceased partner, namely, Sampat Lal Verma, were not interested in continuing the firm or constitute a fresh partnership firm and as such, on 26.01.2024, the plaintiff No. 1 requested the appellant to render the accounts of the firm and disburse half share of the surplus and property of

the partnership firm, but the appellant refused to do the same. It is also stated that even after dissolution of the firm, the appellant willfully and persistently committed breach relating to the affairs of the dissolved partnership firm and also utilized the money of the partnership firm for his personal use and that the appellant is also planning to grab the entire share and property of the partnership firm by manipulating the accounts of the firm and that the aforesaid illegal acts of the appellant casted a cloud of doubt in the mind of the plaintiffs about their half share in the property/surplus of the dissolved partnership firm and therefore, prayed for a decree of declaration that the partnership firm, namely, M/s Verma Market had already been dissolved on the death of Sampat Lal Verma or alternatively a decree for dissolution of the partnership firm and for declaration that the plaintiffs are entitled to half share of the surplus and proceed of the assets and properties of the firm after meeting the liabilities of the firm and for disbursal of the half share of partnership firm and for appointment of receiver, mandatory injunction etc.

On receipt of the summon, the appellant entered appearance before the learned trial Court and since there is a clause for arbitration in the partnership deed i.e. Clause No. 15, the appellant filed one petition, being Petition No. 3608/2024, to refer the matter for arbitration and to dismiss the Commercial Suit.

Upon the said petition, the learned trial Court registered a miscellaneous case, being Misc. (J) Case No. 206/2024, and thereafter, hearing the learned Advocates of both the parties, passed the impugned order dated 09.08.2024."

5. Being aggrieved, the appellant has approached this Court by filing the

present appeal, and contended to set aside the impugned order on the following grounds:

- (i) That, the learned trial Court committed gross error of law and facts in passing the impugned order dated 09.08.2024, in Misc. (J) Case No. 206/2024, arising out of Commercial Suit No. 02/2024, and therefore, the impugned order is liable to be set aside.
- (ii) That, the learned trial Court passed the impugned order dated 09.08.2024, in Misc. (J) Case No. 206/2024, arising out of Commercial Suit No. 02/2024, without application of mind and without considering the record as well as provisions of law in its true perspective and therefore, the impugned order dated 09.08.2024, is liable to be set aside.
- (iii) That, Clause No. 15 of the deed of partnership dated 01.04.1992, provided that "in case of any dispute or difference of opinion regarding the partnership affairs or regarding dissolution or discontinue of the business or at any time the matter shall be referred to arbitration....." In view of the aforesaid clause, the instant Commercial Suit is not maintainable and liable to be dismissed. But, without considering this aspect of the matter, the learned trial Court passed the impugned order dated 09.08.2024 and therefore, the same is liable to be set aside.
- (iv) That, the plaintiffs are the legal heirs of Sampat Lal Verma and the deed of partnership also includes the legal heirs of the deceased partner, namely, Sampat Lal Verma and in view of section 40(1) of the Arbitration and Conciliation Act, 1996, the legal representatives

are also bound by the terms and conditions of the partnership deed. But, without considering this aspect of the matter, the learned trial Court passed the impugned order dated 09.08.2024 and therefore, same is liable to be set aside.

- (v) That, it is settled position of law that once existence of arbitration clause is proved, the judicial authority has no authority to go into the question of applicability of the arbitration clause to the facts of the case and it is for arbitral tribunal to decide whether arbitration agreement is applicable to the dispute raised by the parties. In the instant case, the plaintiffs themselves admit the deed of partnership and thereby the clause of arbitration is also admitted. But, without considering this aspect of the matter, the learned trial Court passed the impugned order dated 09.08.2024 and therefore, the same is liable to be set aside.
- (vi) That, although the partnership firm loses its character after the death of Sampat Lal Verma, but for the purpose of distribution of surplus etc. the said partnership deed is enforceable even by or against the legal heirs of the deceased, who are not the partners in the said firm and therefore legal heirs are also bound by the terms and conditions of the said partnership deed. But without considering this aspect of the matter, the learned trial Court passed the impugned order dated 09.08.2024 and therefore, the same is liable to be set aside.
- (vii) That, the death of a partner does not bring into an end of the partnership for all purposes, the provision pertaining to arbitration can be invoked against the legal heirs of the deceased partner, once

there is an arbitral clause even though the legal heirs of the deceased partner may not be entitled to be inducted as partner, nonetheless the right to pursue the remedy by invoking the arbitral clause does not cease and therefore, the arbitration clause can be invoked against the plaintiffs, but without considering this aspect of the matter, the learned trial Court passed the impugned order dated 09.08.2024 and therefore, the same is liable to be set aside.

- (viii) That, in any view of matter the impugned order dated 09.08.2024, passed by the learned Civil Judge (Senior Division) Dibrugarh, in Misc. (J) Case No. 206/2024, arising out of Commercial Suit No. 02/2024, is liable to be set aside and quashed.

6. Mr. P.J. Saikia, learned Senior counsel for the appellant submits that there is an arbitration clause in the partnership deed itself i.e. Clause No. 15 and in view of existence of the arbitration clause, the matter ought to have been referred to the arbitrator, but, the learned trial Court had ignored the same and relied upon a decision of Hon'ble Supreme Court in the case of **S.P. Misra and Ors. vs. Mohd. Laiquddin Khan and Anr.**, reported in **(2019) 10 SCC 329**, wherein it has been held that a partnership firm stands itself dissolved statutorily by operation of law owing to the death of a partner in a partnership firm having two partners. Mr. Saikia, referring to Section 7 and Section 7(2) of the Act of 1996, submits that the learned trial Court has no jurisdiction to enter in the Commercial Suit and that the legal heirs of the deceased partner i.e. Late Sampat Lal Verma, are also bound by the said agreement on account of death of Sampat Lal Verma, and the learned trial Court had committed illegality by holding that on account of death of one of the partners, the firm automatically stands dissolved. Referring to a decision of Hon'ble Supreme Court in **Ravi**

Prakash Goel vs. Chandra Prakash Goel and Anr., reported in AIR 2007 SC 1517, Mr. Saikia submits that in view of the provision of Section 46 read with Section 48 of the Indian Partnership Act as well as Section 40 of the Arbitration and Conciliation Act, 1996 the application for appointment of arbitrator under arbitration clause of the partnership deed was liable to be allowed. Referring to another decision of Hon'ble Supreme Court, in **Sushma Shivkumar Daga and Anr. vs. Madhurkumar Ramkrishnaji Bajaj and Ors**, reported in AIR 2024 SC 197, Mr. Saikia submits that reference of case to arbitral tribunal can be declined by the court only if the dispute is non-arbitrable. Mr. Saikia has also referred to the following case laws to support his submission:

- (i) **Greaves Cotton Limited vs. United Machinery and appliances**, reported in AIR 2017 SC 120.
- (ii) **Limras Lottery Trading and Co. vs. State of Mizoram**, reported in AIR 2017 GAUHATI 190.
- (iii) **Weatherford Oil Tool Middle East Limited vs. Baker Hughes Singapore Pte**, reported in AIR 2022 SC 5229.
- (iv) **Philip Vanlalmawia John vs. State of Mizoram and Ors.**, reported in 2012 (5) GLT 757.

7. Per contra, Mr. Dutta, learned Senior counsel for the respondents has supported the finding so recorded by the learned trial Court. He submits that in view of the decision of Hon'ble Supreme Court in the case of **S.P. Misra** (supra), the firm M/s Verma Market automatically came to an end and the partnership firm is not binding upon the legal heirs of the present respondents and as such, the appellant by filing petition seeking time to submit written statement has submitted to the jurisdiction of the learned Civil Judge (Senior

Division), Dibrugarh, and besides, there is non-compliance of section 8(2) of the Act of 1996. Further, Mr. Dutta submits that in the plaint, the respondents herein have alleged commission of fraud by the appellant and the arbitrator has no jurisdiction to decide such an issue. Referring to another decision of Hon'ble Supreme Court, in **Atul Singh and Ors. vs. Sunil Kumar Singh and Ors.**, reported in (2008) 2 SCC 602, Mr. Dutta submits that the respondents, being not parties to the arbitration agreement and also being not parties to the partnership deed, not bound by the arbitration clause of the partnership deed and as such, the learned trial court has rightly rejected the petition and that the appeal is devoid of merit and therefore, Mr. Dutta has contended to dismiss the same. Mr. Dutta has also referred to the following case laws to support his submission:

- (i) **Booz Allen and Hamilton Inc. vs. SBI Home Finance Limited and Ors.**, reported in (2011) 5 SCC 532.
- (ii) **M/s Deorah & Co. Diburgarh vs. Commissioner of Income-Tax, N.E. Region, Shillong**, reported in (1993) 1 Gau LR 155.

8. In view of the contentions as well as submissions of learned Advocates of both sides, the issue before this court is:-

Whether, in view of existence of an arbitration clause in the partnership deed, the learned trial court is justified in dismissing the petition filed by the appellant under Section 8 of the Arbitration and Conciliation Act?

09. I have carefully gone through the petition and the documents placed on

record and also gone through the impugned order dated 09.08.2024 passed by the learned trial court. Also I have gone through the decisions referred by the learned Advocates of both sides.

10. It appears that the entire controversy revolves around section 42 of the Partnership Act, and while passing the impugned order the learned trial court also considered Sections 42(c) of the said Act. Therefore, it is necessary to discuss the said provision. The section read as under:-

42. Dissolution on the happening of certain contingencies.-
Subject to contract between the partners a firm is dissolved,
(a) if constituted for a fixed term, by the expiry of that term;
(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
(c) by the death of a partner; and
(d) by the adjudication of a partner as an insolvent.

11. A cursory perusal of the Section 42 indicates that by virtue of Clause (c) to said section, a firm would not get automatically dissolved by the death of a partner. It is subject to the contract between the parties. Section 42(c) can appropriately be applied to a partnership where there are more than two partners. If one of them dies, the firm is dissolved; but if there is a contract to the contrary, the surviving partners will continue the firm. This is well settled in a decision of Hon'ble Supreme Court in **C.I.T.M.P. vs. Seth Govindram Sugar Mills reported in (1956) 57 ITR 510.**

12. In the case in hand, it appears from the Annexure- 'B', the partnership deed, that the same is binding upon the present respondents in view of Clause No. 2 of the said deed, wherein it is stated that 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. It also appears that the 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.

13. It is not in dispute that the deed of partnership-Annexure-'B', which being enclosed at page No. 29 to 37, of the memo of Appeal that there is an arbitration clause which is read as under:-

“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 or the Board of arbitrators so given shall be final and binding on the parties.”

14. Further, from the cause title of the plaint of the Commercial Suit, which is enclosed with the Memo of Appeal as Annexure-'A', at page No. 13, that it was filed for declaration/dissolution, appointment of receiver, injunction etc. and a prayer had been made for declaration that the partnership firm of M/s Verma Market had already been dissolved on the death of Sampat Lal Verma or alternatively, a decree for dissolution of the partnership firm M/s Verma Market and for declaration of ½ share of the respondents herein and appointment of receiver, perpetual and mandatory and prohibitory injunction, cost etc.

15. The deed of partnership, dated 01.04.1992 (Annexure-B), specially clause No. 15, indicates that in case of 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 and since the dispute regarding partnership affairs of the firm or regarding dissolution or discontinuation of the partnership business, all have to be governed by the terms and conditions mentioned in the deed of partnership.

16. On the other hand Clause No. 12, of the said deed indicates that the partner may alter, amend the terms of the partnership and add and other terms if mutually agreed upon, whatever not mentioned herein, specifically, shall governed by the terms of the Indian Partnership Act and Rules thereunder as in force. Thus, this clause indicates that the Indian Partnership Act and Rules shall cover only those aspects not specifically mentioned in the deed.

17. It also appears that the dispute relates to the affairs of the partnership firm and regarding its dissolution or discontinuation of the partnership business has been specifically dealt with in clause 15 of the deed, which indicates that the dispute regarding affairs of the firm its dissolution or discontinuation of the business has to be referred to arbitration. And since this aspect has been specifically provided in the partnership deed itself, this Court is of the view that section 42(c) of the Indian Partnership Act would not stand in the way of referring the matter to arbitration in as much as it has been expressly provided in the partnership deed, dated 01.04.1992.

18. It is to be noted here that Section 40(1) of the Arbitration and Conciliation Act, 1996, provides that the legal representatives are also bound by the terms and conditions of the partnership deed. But, inspite of this the learned trial court has held that the partnership firm stands itself dissolved statutorily by operation of law owing to the death of a partner in a partnership firm having two partners and as such, on the death of one of the partners statutorily dissolve the partnership firm by operation of law. In arriving at such a finding

the learned trial court had placed reliance upon the decision of Hon'ble Supreme Court in the case of **S.P. Misra** (supra).

19. In the case of **S.P. Misra** (supra), the issue before the Hon'ble Supreme Court was executability of a decree obtained by one of the partners of a partnership deed, and on account of his death the decree was sought to be executed by his legal heirs against the legal heirs of the judgment debtor, who was the other partner of the partnership deed, and who had already suffered demise. In this context Hon'ble Supreme Court has held that since the legal heirs of the judgment debtor were not parties to the partnership deed and that the partnership stands dissolved statutorily, by operation of law, in view of provision of Section 42(c) of the Indian Partnership Act, 1932, in view of death of one of the partners, the legal heirs are not parties to the partnership firm and also have not derived the benefit of the assets of the partnership firm, the decree, so obtained is not executable against the legal heirs of the deceased partner.

20. But, the issue here in this case relates to referring of the dispute relating to the partnership affairs and regarding dissolution and discontinuance of the partnership business between one of the partner to the partnership deed and legal heirs of the deceased partner, to arbitration, in view of clause 15 of the said partnership deed. The issue here in this case is different from the issue in the case of **S.P. Misra** (supra). In view of different factual backdrop and different issues involved in the both the cases this court afraid the ratio laid down in the case of **S.P. Misra** (supra) would not advance the case of the respondent.

21. In view of clause 2 of the deed of partnership, which has already been

discussed herein above, and in view of existence of express provision to deal with the affairs of the firm, its dissolution or discontinuation that has been specifically provided in clause 15 of the deed of partnership, this Court of the view that the ground so assigned for dismissal of the petition under Section 8 of the Arbitration and Conciliation Act, 1996, is bereft of any logic.

22. It is to be noted here that Hon'ble Supreme Court in the case of **Ravi Prakash Goel** (supra), at paragraph No. 27, has held that if the 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. In the case in hand, the right to sue for the rendition of accounts of the partnership firm i.e. M/s Verma Market survives on the legal representatives of the deceased partner, namely, Sampat Lal Verma and they are also entitled to invoke the arbitration clause contained in the partnership deed and on the same logic, the appellant herein also being the sole surviving partner can invoke the arbitration clause contained in the partnership firm deed against the legal heirs of the deceased partner of the partnership firm.

23. It is also to be noted here that Hon'ble Supreme Court in the case of **P. Anand Gajapathi Raju & Ors vs P.V.G. Raju (Died) & Ors.**, reported in **AIR 2000 SC 1886**, while examining the scope of Section 5 of the Act of 1996, held that Section 5 of the Act clearly brings out the object of the new Act, namely, that of encouraging resolution of disputes expeditiously and less expensively and when there is an arbitration agreement, the Courts intervention should be minimal. Then, referring to Section 8 of the Act of 1996, Hon'ble Supreme Court has held that the language of Section 8 is peremptory. It is, therefore, obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original

action.

24. Same principle is reiterated in the case of **Hindustan Petroleum Corpn. Ltd vs. M/S. Pinkcity Midway Petroleums** reported in (2003) 6 SCC 503, wherein it has been held that if the existence of an arbitral clause in the agreement is accepted by both the parties as also by the courts below but the applicability thereof is disputed by the respondent and the said dispute is accepted by the courts below. Be that as it may, at the cost of repetition, we may again state that the existence of the arbitration clause is admitted. If that be so, in view of the mandatory language of [Section 8](#) of the Act, the courts below ought to have referred the dispute to arbitration.

25. Indisputably, the dispute between the parties is arbitrable. Indisputably also there is arbitration clause in the deed of partnership. It is also well settled in the case of **Sushma Shivkumar Daga and Anr.(supra)** that reference of case to arbitral tribunal can be declined by the court only if the dispute is non-arbitrable. This being the position, I find sufficient force in the submission of Mr. Saikia, learned Senior counsel for the appellant and the decisions, so referred by him, also strengthened his submission, that once there is an arbitration clause, the Court has to refer the matter to the arbitrator.

26. Though, Mr. Dutta, learned Senior Counsel for the respondents submits that by not raising the issue at the very first instance, the appellant herein has waived his right and that he has submitted to the jurisdiction of the Court, and that he has not complied with the provision of section 8(2) of the Arbitration and Conciliation Act, 1996, yet, said submission left this Court unimpressed in as much as, along with the petition, the appellant had enclosed the original partnership deed for referring the dispute to arbitration. This is apparent from the written objection filed by the respondent herein. And as such it cannot be

said that he had not complied with the Section 8(2) of the said Act. The suit was instituted on 12.02.2024 and the appellant had received the summon on 23.02.2024, and on 26.04.2024 he had filed a petition for providing a legible copy of the deed of partnership and for granting him time to file written statement and thereafter, on 30.05.2024, he had filed the petition under section 8 of the said Act. Mere filing a petition seeking time to file written statement, and thereby submitting to the jurisdiction of the learned trial court, to the considered opinion of this court is an argument too tenuous to accept.

26.1. Also I have carefully gone through the decision in **Atul Singh (supra)**, referred by Mr. Dutta and I find the factual background of the said case is clearly distinguishable from the facts herein this case, inasmuch as in the said case the arbitration agreement itself was claimed to be illegal and void by the other parties and such a question regarding validity of agreement can be decided by civil court only. This is not the fact situation here in this case. It is however a fact that the respondents are not parties to the partnership deed. But, by virtue of Clause-2 the said deed, being legal representative of the deemed partner they are bound by the Clause.

26.2. Similarly, mere averment here and there in the plaint regarding fraud, without there being any supporting material would not justify rejection of the petition under section 8 of the Act. While dealing with this aspect, in the case of **Rashid Raza vs. Sadaf Akhtar**, reported in (2019) 8 SCC 710, Hon'ble Supreme Court has explained its earlier decision in **A. Ayyasamy v. A. Paramasivam**, reported in (2016) 10 SCC 386, has held as under:-

“4. The principles of law laid down in this appeal make a distinction between serious allegations of forgery/fabrication in support of the plea of fraud as

opposed to “simple allegations”. Two working tests laid down in para 25 are: (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud touch upon the internal affairs of the parties *inter se* having no implication in the public domain.”

26.3. Here in this case no material has been brought to the notice of this court by Mr. Dutta, the learned counsel for the respondent, in support of the allegation of fraud. Besides, the same failed to withstand the two tests laid down in the case discussed herein above. The allegation seems to have touched upon the internal affairs of the parties, *inter-se* having no implication in the public domain. I have also gone through the other decisions referred by Mr. Dutta. There is no quarrel at the bar about the proposition of law laid down in the said cases. But, in the given fact situation, the ratio laid down in the said cases, to the considered opinion of this Court, would not advance the case of the respondents and therefore, reference and detail discussion of all those decision is found to be not required to decide the instant appeal.

27. Under the aforesaid discussion and finding, this court is of the view that the impugned order of rejection of the petition Section 8 of the Arbitration and Conciliation Act, for referring the matter for arbitration, so passed by the learned trial court has failed to withstand the legal scrutiny. In view of existence of an arbitration clause in the partnership deed, the learned trial court is not justified in dismissing the petition.

28. In the result, I find sufficient merit in this appeal and accordingly, the same stands allowed. The impugned order, dated 09.08.2024, stands set aside and quashed. Consequent upon, the learned trial Court shall, forthwith, refer the matter for arbitration.

29. In terms of above, this arbitration appeal stands disposed of. The parties have to bear their own cost.

JUDGE

Comparing Assistant