

ORIGINAL JURISDICTION

Mr. Justice S. Manu

A.R. No.96 of 2025

2025 November 26

M/s. P.K. Chandrasekharan Nair and Co . . . Petitioner

v.

M/s. Hindustan Petroleum Corporation Limited . . Respondents

Arbitration request is filed by a partner of M/s. P.K.Chandrasekharan Nair and Co., a partnership firm, in its name. The firm was a dealer of the respondent since 1970. An agreement was executed between the firm and the respondent in 1970 which was renewed periodically. Last renewal was on 01.07.2019, vide Annexure-1 agreement. It is contended that as per Annexure 1 agreement, the firm was entitled to run the retail outlet for a period of 10 years ending on 30.06.2029. The respondent meanwhile entered into dealership with another dealer, which came to be on record in a previous litigation. Petitioner points out that the action of the respondent in entering into agreement with another dealer is in breach of Annexure 1 agreement. Annexure 4 is a notice issued to the respondent calling upon it to pay a sum of 2,51,60,000/- as damages. There was no response to the notice. Subsequently, Annexure 5 notice dated 19.02.2025 was issued invoking the arbitration clause in Annexure 1 agreement for initiating arbitration. A former Judge of the High Court was nominated as the arbitrator. However, no response was received from the respondent and hence, the present arbitration request was filed. Respondent questioned the maintainability of the Arbitration Request pointing out that the same is filed without express authority of the remaining partner. Dismissing the Arbitration request, the Court;

Issue for Consideration

Whether Arbitration Request is maintainable when no express authority was given by the other partner to prefer arbitration request in the name of the partnership to submit disputes relating to the business of the firm to arbitration?

Partnership Act, 1932 (Central Act 9 of 1932)—Section 19—No implied authority can be claimed by a partner in the matter of submitting a dispute relating to the business of the firm, in the absence of usage or custom of trade to the contrary—When a partner of a partnership firm invokes Section 11 of Arbitration and Conciliation Act, and seeks appointment of an Arbitrator for deciding a dispute related to the business of the firm, he or she is definitely submitting a dispute relating to the business of the firm to arbitration – Filing of an application under Section 11(6) would also fall within the ambit of Section 19(2)(a) of Indian Partnership Act—There cannot be a proposition that every application filed under Section 11(6) of the Arbitration and Conciliation Act, shall be mechanically entertained and the examination should confine to the existence and validity of an arbitration agreement—Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996) —Section 11(6).

Held:

In other words, the dispute is not pertaining to existence or validity of the arbitration clause in the agreement, but it is with regard to the validity and maintainability of the request made under Section 11 of the Act by one of the partners, allegedly on behalf of the firm, without express authorization by the remaining partner. In my view, the principles laid down by the Hon'ble Supreme Court in **In Re Interplay** (*Supra*) and **Ajay Madhusudan Patel** (*Supra*) cannot be stretched so far to contend that the maintainability of a request under Section 11(6) of the Arbitration and Conciliation Act shall not be examined by the Court. Endorsing such a proposition would lead to absurd results. There cannot be a proposition that every application filed under Section 11(6) of the Arbitration and Conciliation Act shall be mechanically entertained and the examination should confine regarding the existence and validity of the arbitration agreement. The appointment of arbitrator, invoking Section 11(6) of the Arbitration and Conciliation Act, is a special power conferred on the Court and therefore primary scrutiny of the application under Section 11(6) of the Arbitration and Conciliation Act is not a matter to be left to the domain of the arbitrator. Looking at the competency of the applicant and satisfying about the same is well within the scope of the primary enquiry while considering an application under Section 11(6) of the Act. Likewise if there is any statutory bar, the same would also fall within the ambit of primary scrutiny. Hence the submission of the learned counsel for the petitioner that objection raised by the respondent should be left to the Arbitrator to decide, is rejected. Therefore, no implied authority can be claimed by a partner in the matter of submitting a dispute relating to the business of a firm, in the absence of the usage or custom of trade to the contrary. Arbitration proceedings are initiated by serving notice as contemplated under the relevant provisions of the Arbitration and Conciliation Act. If there is no consensus regarding appointment of arbitrator, recourse can be made to Section 11(6) of the Arbitration and Conciliation Act for appointment of Arbitrator. When a partner of a partnership firm invokes Section 11 of the Act and seeks appointment of an arbitrator for deciding a dispute related to the business of the firm, he or she is definitely submitting a dispute relating to the business of the firm to arbitration. Therefore, it follows that implied authority under Section 19(1) is not sufficient for invoking the remedy under Section 11 of the Arbitration and Conciliation Act and express authority is indispensable. The above

clause is obviously general in nature. In view of Section 19(2)(a) of the Indian Partnership Act, for submitting disputes related to the business of the firm to arbitration, express conferment of authority would be necessary in the absence of any usage or custom of trade to the contrary. Therefore, the contention on the basis of the above clause is untenable. It is true that the factual situation in the case **M/s.Kripa Fuels** (*Supra*) was slightly different from the factual backdrop of the instant case. Nevertheless, it was held in **M/s.Kripa Fuels** (*Supra*) that in view of Section 19(2) (a) of the Indian Partnership Act, 1932 there is no implied authority for a partner in the absence of any usage or custom of trade to the contrary to submit a dispute relating to the business of the firm to arbitration. The verbiage employed in Section 19(2)(a) of the Indian Partnership Act is “submit a dispute”. The question is, therefore, as to what will amount to submitting a dispute to arbitration and whether approaching the Court under Section 11(6) of the Arbitration and Conciliation Act would also amount to submitting a dispute to arbitration. In legal parlance 'to submit' by and large means to place/present something formally for consideration before an authority. In the context of the Arbitration and Conciliation Act, filing an application under Section 11(6) of the Arbitration and Conciliation Act is a crucial measure. Impasse due to lack of consensus among the parties to the arbitration agreement regarding appointment of arbitrator is sought to be resolved by intervention of the Court. Though the arbitration process in the strict sense commences thereafter before the arbitrator, by invoking Section 11(6) of the Arbitration and Conciliation Act, the party concerned is virtually submitting the disputes to the process of arbitration. Hence the filing of an application under Section 11(6) of the Arbitration and Conciliation Act would also fall within the ambit of Section 19(2)(a) of the Indian Partnership Act. Consequently, express authority is essential unless there is any usage or custom of trade to the contrary. In the case at hand, in Annexure 5 notice issued by the Advocate, it was stated that the same was being issued under instruction from both partners. As noted above “to submit” in legal parlance denotes placing something for consideration before an authority having jurisdiction to examine the matter. Therefore, even if Annexure 5 notice was issued jointly by the partners, requirement of express authority cannot be ignored when one of the partners invokes Section 11(6) of the Arbitration and Conciliation Act, claiming that it is on behalf of the firm. (*Paragraphs 16, 18, 20, 26 and 28*)

Case Law Cited:

(1) (2024) 6 S.C.C. 1; (2) 2024 S.C.C. OnLine S.C. 2597; (3) 2025 S.C.C. OnLine Bom. 42—*Distinguished*.

(4) 2024 S.C.C. OnLine Ker. 6742; (5) 2023 S.C.C. OnLine Bom. 2704; (6) Judgment of High Court of Bombay in Commercial Arbitration Petition (L) No 238 of 2019; (7) 2024 S.C.C. OnLine Bombay 3540—*Referred to*.

List of Acts:

- (1) Indian Partnership Act, 1932.
- (2) Arbitration and Conciliation Act, 1996.

List of Keywords:

Arbitration clause, Arbitrator, Appointment, Partnership, Express authority, Implied authority, Other partner, Submit a dispute.

Case Arising From:

Arbitration Request filed under Arbitration and Conciliation Act, 1996.

Appearance of Parties:

Sri. Reji George, Sri. Saisankar S. and Sri. Joseph Raju Mathews . . . for petitioner.

Sri. E.K. Nandakumar (Sr. Adv)., Sri. Gopikrishnan Nambiar, Sri. nK. John Mathai, Sri. Joson Manavalan, Sri. Kurian Thomas, Sri. Paulose C. Abraham, Sri. Raja Kannan, Smt. Nayanpally Ramola and Smt. Pooja Menon . . . for respondent.

ORDER

This arbitration request is filed by a partner of M/s.P.K.Chandrasekharan Nair and Co., a partnership firm, in its name. It is stated that the firm was a dealer of the respondent since 1970. The firm was operating a retail outlet of petroleum products of the respondent in the property having an extent 39.620 cents in Survey No.931/1 of Nadama Village owned by Mr.N.Krishnan. An agreement was executed between the firm and the respondent in 1970 which was renewed periodically. Last renewal was on 01.07.2019. A copy of the agreement dated 01.07.2019 is produced as Annexure 1.

2. In 2013, the land owner filed O.S. 293 of 2013 before the Sub Court, Ernakulam, for recovery of possession of property and other reliefs against the respondent and the then Managing Partner of the firm. Suit was dismissed and dispute was referred for arbitration as there was an arbitration clause in the lease deed between the respondent and the land owner. After filing of the suit, the land owner refused to renew the lease and to give consent for renewing the explosive licence. The outlet was therefore closed from 21.02.2021. Dispute between the respondent and the land owner was referred for arbitration. While so, the land owner filed C.S. No.80 of 2022 before the Commercial Court, Ernakulam, against the respondent and the then Managing Partner of the firm for compensation for unauthorized occupation after the expiry of the lease. The suit was dismissed for default on 30.08.2022.

3. On 29.06.2022 the respondent sent Annexure 2 letter instructing the firm to find alternate site due to pending litigation. Annexure 3 reply was sent seeking time to sort out the matter and to find alternate site. Later the respondent allowed another dealer to start a new retail outlet on the premises. W.P(C) No.8797 of 2024 was filed aggrieved by the said action. Respondent entered appearance and submitted that a fresh dealership agreement was entered into by it with another dealer. Therefore, the said dealer was impleaded. He produced a copy of the agreement between him and the respondent.

4. It is contended that as per Annexure 1 agreement, the firm was entitled to run the retail outlet for a period of 10 years ending on 30.06.2029. Therefore, it is alleged that the action of the respondent in entering into agreement with another dealer is in breach of Annexure 1 agreement. Annexure 4 is a notice issued to the respondent calling upon to pay a sum of 2,51,60,000/- as damages. There was no response to the notice. Subsequently, Annexure 5 notice dated 19.02.2025 was issued invoking the arbitration clause in Annexure 1 agreement for initiating arbitration. A former Judge of this Court was nominated as the arbitrator. However, no response was received from the respondent and hence the arbitration request was filed.

5. Respondent filed counter affidavit. Allegations in the arbitration request against the respondent are denied in the counter affidavit. Respondent has produced a copy of the partnership agreement as Annexure A, pointing out that Mr.Anilkumar K.C. and Mrs.Ganga Sreekumar were the partners of M/s.P.K.Chandrasekharan Nair and Co. Mr.Anilkumar K.C. holds 51% of the partnership and 49% of the partnership was held by Mrs.Ganga Sreekumar. Respondent states that this arbitration request is not maintainable in view of the specific bar contained in Section 19(2)(a) of the Indian Partnership Act, 1932. Further the respondent states that no express authority was given by the other partner to Mr.Anilkumar K.C. who has filed this arbitration request in the name of the partnership to submit disputes relating to the business of the firm to arbitration. Therefore, the respondent contended that the arbitration request is liable to be rejected as not maintainable. Apart from the contention regarding maintainability, respondent has stated some other grounds also in the counter affidavit in support of its plea to reject the arbitration request.

6. Heard Sri.Reji George, learned counsel for the petitioner and Sri.E.K.Nandakumar, learned Senior Counsel for the respondent.

7. The learned Senior Counsel for the respondent requested that the maintainability of the arbitration request may be considered first. Therefore, the learned counsel on both sides were heard on the said aspect in detail.

8. Sri.Reji George, in response to the contention regarding maintainability raised by the respondent, submitted that the arbitration request is impeccably maintainable. He submitted that the scope of enquiry under Section 11 of the Arbitration and Conciliation Act is constricted and the only requirement is to verify whether there is a valid arbitration agreement as per the provisions of the Act. It is not within the domain of this Court to look into any other aspects or to analyze the merits of contentions regarding validity of the arbitration clause, arbitrability of dispute etc. Those are matters falling within the exclusive domain of the arbitrator. He hence submitted that the contention of the respondent regarding Section 19(2)(a) of the Indian Partnership Act is also a matter to be considered by the arbitrator. The learned counsel relied on the judgment of the Hon'ble Supreme Court in **Ajay Madhusudan Patel v. Jyotrindra S. Patel** [2024 S.C.C. OnLine S.C. 2597] to buttress his contentions.

9. The learned counsel relied on the judgment of the Bombay High Court in **Shreegopal Barasia v. Creative Homes and Others** [2025 S.C.C. OnLine Bom. 42] also and submitted that a similar objection referring to Section 19(2)(a) of the Indian Partnership Act was rejected by the Bombay High Court in the said judgment. He hence submitted that

the preliminary objection raised on the basis of Section 19(2)(a) of the Indian Partnership Act is liable to be rejected as done by the Bombay High Court.

10. The learned counsel further submitted that in view of clause 8 of Annexure A - deed of reconstitution of partnership dated 25.06.2019, Mr.Anilkumar K.C. was expressly authorized to represent the firm before the Government, semi-government, statutory, judicial authorities on behalf of the firm and all such acts shall be binding on the firm. The learned counsel contended that the said clause in the deed expressly authorizes Mr.Anilkumar K.C. to represent the firm before judicial authorities also. He hence submitted that in view of the said authorization ingrained in the deed, the arbitration request filed by Mr.Anilkumar K.C. is maintainable and it is not hit by Section 19(2)(a) of the Indian Partnership Act.

11. The learned Senior Counsel for the respondent Sri.E.K. Nandakumar per contra contended that the other partner of the firm has not given any express consent or authorization to Mr.Anilkumar K.C.. She is not arrayed as a party in this arbitration request. Besides relying on a general clause in the deed, Mr.Anilkumar K.C. has not produced any material showing consent of the other partner. The Senior Counsel hence argued that the arbitration request is not maintainable in view of Section 19(2)(a) of the Indian Partnership Act. He relied on the judgment of this Court in **M/s.Kripa Fuels v. Hindustan Petroleum Corporation Ltd. and another** [2024 S.C.C. OnLine Ker. 6742] and contended that in a similar case, this Court rejected an arbitration request filed by one of the partners without the consent of the other. This Court relied on Section 19(2)(a) of the Indian Partnership Act and held that the arbitration request filed without the consent of all partners was not liable to be entertained. The learned Senior Counsel referred to the judgment of the Bombay High Court in **Shailesh Ranka and Others v Windsor Machines Limited and Another** [2023 S.C.C. OnLine Bom. 2704]. In the said judgment, the Bombay High Court held that in view of Section 19(2) (a) of the Indian Partnership Act, implied authority of a partner in a partnership firm does not empower such partner to submit a dispute relating to the business of the firm to arbitration. In the said case, the applicant raised the dispute, pursued the same and appointed a neutral person as arbitrator without the concurrence of the other partner. The same was held impermissible. The learned Senior Counsel made reference to another judgment of the Bombay High Court in **Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) v. Godrej and Boyce Manufacturing Company Ltd.** [Commercial Arbitration Petition (L) No.238 of 2019], wherein the Court held that express authority of other partners is mandatory for submitting a dispute relating to business of the partnership firm to arbitration.

12. The learned Senior Counsel refuted the contention of the learned counsel for the petitioner that clause 8 of the partnership deed empowers Mr.Anilkumar K.C. to initiate arbitration on behalf of the firm. The learned Senior Counsel submitted that no such authority can be deciphered from clause 8 of the partnership deed. He also contended that it is well within the authority of the Hon'ble Chief Justice or his designate while exercising the jurisdiction under Section 11 of the Arbitration and Conciliation Act to consider the maintainability of an arbitration request when it is pointed out that the same is ex-facie not maintainable for breach of express provisions of law.

13. Learned counsel for the petitioner had argued that contention regarding applicability of Section 19(2)(a) of the Indian Partnership Act is not a matter to be deeply analyzed in a proceeding under Section 11 of the Arbitration and Conciliation Act.

14. I shall first deal with the said contention. The learned counsel had made reference to the judgment of the Hon'ble Supreme Court in the case **Ajay Madhusudan Patel** (Supra) in support of his contention. In the said judgment, the Hon'ble Supreme Court analyzed various previous judgments on the scope and ambit of Section 11 of the Arbitration and Conciliation Act and summarized the position of law.

15. A seven judge bench of the Hon'ble Supreme Court, taking note of the change brought into the statutory regime by incorporating Section 11(6A), which still remains in force as the amendment deleting the same has not been notified, held in **In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899** [(2024) 6 S.C.C. 1], that the scope of examination under Section 11(6) should be confined to the existence of the arbitration agreement, and that the validity of an arbitration agreement must be restricted to the requirement of formal validity, such as the requirement that the agreement be in writing. Substantive objections pertaining to existence and validity on the basis of evidence must be left to the arbitral tribunal since it can rule on its own jurisdiction. It was held as follows:

“166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.

167. Section 11(6-A) uses the expression “examination of the existence of an arbitration agreement”. The purport of using the word “examination” connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression “examination” does not connote or imply a laborious or contested inquiry. [P.Ramanatha Aiyar, *The Law Lexicon* (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.* [*Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*, (2005) 7 S.C.C. 234].”

16. In the instant case, the objection raised by the respondent is regarding the competence of one of the partners to seek appointment of arbitrator and thereby reference for arbitration, without the express authority/consent of the other partner. In other words, the dispute is not pertaining to existence or validity of the arbitration clause in the agreement, but it is with regard to the validity and maintainability of the request made under Section 11 of the Act by one of the partners, allegedly on behalf of the firm, without express authorization by the remaining partner. In my view, the principles laid down by the Hon'ble Supreme Court in **In Re Interplay** (Supra) and **Ajay Madhusudan Patel** (Supra) cannot be stretched so far to contend that the maintainability of a request under Section 11(6) of the Arbitration and Conciliation Act shall not be examined by the Court. Endorsing such a proposition would lead to absurd results. There may arise several situations wherein applications filed under Section 11(6) of the Arbitration and Conciliation Act may not be maintainable. If the parties had agreed that jurisdiction will be with Courts at a particular place for resolution of disputes and that venue of arbitration shall also be the same place and the said place falls outside the jurisdiction of the High Court to which a request is made under Section 11(6) of the Arbitration and Conciliation Act, definitely the Court can reject the request as the proper forum would be the High Court exercising jurisdiction over the place fixed as venue of the arbitration as also for the purpose of jurisdiction. Similarly, if a body corporate is shown as the applicant and an incompetent/ unauthorised person is representing it, the application need not be entertained as the same would not be maintainable. As in the case at hand, if it is pointed out that there is breach of a specific provision of law, it cannot be ignored. Therefore, scrutiny of the maintainability of an application under Section 11(6) of the Arbitration and Conciliation Act is well within the authority of the Court. There cannot be a proposition that every application filed under Section 11(6) of the Arbitration and Conciliation Act shall be mechanically entertained and the examination should confine regarding the existence and validity of the arbitration agreement. The appointment of arbitrator, invoking Section 11(6) of the Arbitration and Conciliation Act, is a special power conferred on the Court and therefore primary scrutiny of the application under Section 11(6) of the Arbitration and Conciliation Act is not a matter to be left to the domain of the arbitrator. Looking at the competency of the applicant and satisfying about the same is well within the scope of the primary enquiry while considering an application under Section 11(6) of the Act. Likewise if there is any statutory bar, the same would also fall within the ambit of primary scrutiny. Hence the submission of the learned counsel for the petitioner that objection raised by the respondent should be left to the Arbitrator to decide, is rejected.

17. The next aspect is the scope of Section 19 of the Indian Partnership Act, 1932. The provision is extracted hereunder for ready reference:

“19. Implied authority of partner as agent of the firm –

(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his “implied authority”.

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to –

- (a) submit a dispute relating to the business of the firm to arbitration,
- (b) open a banking account on behalf of the firm in his own name,
- (c) compromise or relinquish any claim or portion of a claim by the firm, (d) withdraw a suit or proceeding filed on behalf of the firm,
- (e) admit any liability in a suit or proceeding against the firm,
- (f) acquire immovable property on behalf of the firm,
- (g) transfer immovable property belonging to the firm, or
- (h) enter into partnership on behalf of the firm."

18. The provision deals with implied authority of partner as an agent of the firm. Subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, would bind the firm and the said authority conferred on the partner is called his implied authority. Sub Section (2) carves out exceptions to the said implied authority. It provides that in the absence of any usage or custom of trade to the contrary, the matters specified in clauses '(a)' to '(h)' would not fall within the implied authority of a partner. Plain reading of the provisions makes it clear that for matters specified in clauses '(a)' to '(h)' which are of great significance and consequences, a partner cannot have the implied authority in the absence of any usage or custom of trade to the contrary. Clause (a) precisely deals with submitting disputes relating to the business of the firm to arbitration. Therefore, no implied authority can be claimed by a partner in the matter of submitting a dispute relating to the business of a firm, in the absence of the usage or custom of trade to the contrary. Arbitration proceedings are initiated by serving notice as contemplated under the relevant provisions of the Arbitration and Conciliation Act. If there is no consensus regarding appointment of arbitrator, recourse can be made to Section 11(6) of the Arbitration and Conciliation Act for appointment of Arbitrator. When a partner of a partnership firm invokes Section 11 of the Act and seeks appointment of an arbitrator for deciding a dispute related to the business of the firm, he or she is definitely submitting a dispute relating to the business of the firm to arbitration. Therefore, it follows that implied authority under Section 19(1) is not sufficient for invoking the remedy under Section 11 of the Arbitration and Conciliation Act and express authority is indispensable.

19. The learned counsel for the petitioner contended that the factual characteristics of **M/s.Kripa Fuels** (*Supra*) are not comparable to the case at hand for the reason that in the said case one of the partners appeared before this Court and opposed the arbitration request stating that the same was moved without his knowledge and concurrence. The learned counsel relied on clause 8 of the partnership deed to further contend that in view of the said clause, the party who has approached this Court in the instant case has express authority to represent the firm in judicial proceedings also and hence the bar under Section 19(2)(a) will not be attracted in this case. He thus sought to distinguish the judgment in **M/s.Kripa Fuels** (*Supra*). Clause 8 of the partnership deed reads as under:

“8. **Management:** Mr.Anilkumar K.C. and Mrs.Ganga Sreekumar shall be equal partners of the firm and they shall have the power to do all acts, matters and things proper and expedient for carrying on the business and affairs of the firm and he shall represent the firm before the government, semi-government, statutory, judicial authorities or others on behalf of the firm and all such acts shall be binding on the firm.”

20. The above clause is obviously general in nature. In view of Section 19(2)(a) of the Indian Partnership Act, for submitting disputes related to the business of the firm to arbitration, express conferment of authority would be necessary in the absence of any usage or custom of trade to the contrary. Therefore, the contention on the basis of the above clause is untenable. It is true that the factual situation in the case **M/s.Kripa Fuels (Supra)** was slightly different from the factual backdrop of the instant case. Nevertheless, it was held in **M/s.Kripa Fuels (Supra)** that in view of Section 19(2) (a) of the Indian Partnership Act, 1932 there is no implied authority for a partner in the absence of any usage or custom of trade to the contrary to submit a dispute relating to the business of the firm to arbitration.

21. Sri.Reji George, learned counsel for the petitioner, relied on a judgment of the Bombay High Court in **Shreegopal Barasia (Supra)**. Contentions raised, relying on Section 19(2)(a) of the Indian Partnership Act, were rejected in the said case and the Court held that those contentions can also be raised before the arbitrator. However, careful reading of the said judgment shows that the factual situation and contention raised were on entirely different premises. As clear from Paragraph No.4 of the judgment, contention was that the agreement containing the arbitration clause in the said case was executed by an individual partner without any authority, to bind the firm. It was contended that for executing such an agreement, explicit authorization was required in view of Section 19(2)(a) of the Indian Partnership Act. Further, as discernible from Paragraph No.5, another contention was raised that the very existence of the agreement was in doubt as it was not validly executed. The Court analyzed the applicability of the bar under Section 19(2)(a) of the Indian Partnership Act in the said context and held as under in Paragraph No.13:

“13. Prima facie, it is apparent to me that "submission of a dispute" relating to the business of the firm to arbitration would necessarily entail the existence of a dispute. Unless a dispute comes into existence, there would be no question of submitting it to arbitration. This is the action - of submitting a dispute that exists, to arbitration - that is covered by Section 19(2)(a) of the Partnership Act. A dispute that has arisen can be submitted to arbitration only when there is a right to submit it to arbitration. Such a right can come into existence only when there is an agreement containing an arbitration clause. When there exists a right to submit a dispute to arbitration by reason of an arbitration clause, the action of actually submitting to arbitration, an actual dispute that has arisen, could perhaps not be done without express authority (that too would depend on custom and usage of trade).”

22. In Paragraph No.15, the Court held as under:

“15. An arbitration clause in a commercial agreement only means creation of a framework under which future disputes could be submitted in the future to arbitration. It is such decision to actually "submit" an actual "dispute" that has arisen in the course of business, that, *prima facie*, in my opinion, would attract the jurisdiction of Section 19(2)(a) of the Partnership Act. Section 19(2)(a) of the Partnership Act, *prima facie*, appears to be one that protects the partnership firm from a partner subjecting the firm to arbitration proceedings without consulting other partners. It could perhaps be regarded as a provision that prevents a partner from agreeing to opt for arbitration instead of pursuing litigation in Court, when faced with a dispute. There was an era when arbitration was considered inferior to court litigation, and opting for arbitration could have been seen as compromising what could be a stronger prospect for the firm in a Court. Doing so without consulting other partners, could be the scope of Section 19(2)(1) of the Partnership Act. Even in such situations, whether there is a custom or usage of trade, would also need to be examined.”

23. Therefore, the Bombay High Court in the case **Shreegopal Barasia** (*Supra*) was addressing a different situation wherein the validity of the agreement containing arbitration clause was disputed in view of Section 19(2)(a) of the Indian Partnership Act, whereas in the case at hand, the objection is regarding competency of an individual partner to submit disputes pertaining to the business of the firm to arbitration by invoking Section 11 of the Arbitration and Conciliation Act without any authorization from the other partner. Hence the decision in the case **Shreegopal Barasia** (*Supra*) is not helpful to advance the case of the petitioner. Nonetheless it is to be noted that the Court held in paragraph 15, that Section 19(2)(a) *prima facie* appears to be one that protects the partnership firm from a partner subjecting the firm to arbitration proceedings without consulting other partners.

24. Learned Senior Counsel for the respondent relied on another judgment of the Bombay High Court in **Shailesh Ranka** (*Supra*). In the said judgment, the Court accepted contention regarding the bar under Section 19(2)(a) of the Indian Partnership Act and noticed that invocation of arbitration by one of the partners, without joining the other partner, was hit by the same. In the said case, notice invoking arbitration clause was issued only on behalf of one of the partners. The court held that the notice was defective and hence cause of action for filing the application under Section 11 of the Arbitration and Conciliation Act would not arise from such a defective notice. It is noticed that the said judgment was later reviewed. Order in the review petition is reported in **2024 S.C.C. OnLine Bombay 3540**. All the same, the review was on noticing an error on the face of the record, as the court had proceeded to render the judgment assuming that one of the partners was a partnership firm while as a matter of fact it was a Private Limited Company. It is to be noticed that the factual situation in the said case was also contrasting as the contention was that the notice invoking the arbitration clause was issued only on behalf of one of the partners. In the case at hand, Annexure 5 notice was issued on behalf of both partners.

25. Contention on the basis of Section 19(2)(a) of the Indian Partnership Act that the express authority of a partner is mandatory to submit dispute relating to the business of the firm was accepted by the Bombay High Court in the judgment in **Maharashtra State**

Electricity Distribution Company Ltd. (MSEDCL) (*Supra*), as rightly pointed out by the learned Senior Counsel for the respondent.

26. The verbiage employed in Section 19(2)(a) of the Indian Partnership Act is “*submit a dispute*”. The question is, therefore, as to what will amount to submitting a dispute to arbitration and whether approaching the Court under Section 11(6) of the Arbitration and Conciliation Act would also amount to submitting a dispute to arbitration. In legal parlance 'to submit' by and large means to place/present something formally for consideration before an authority. In the context of the Arbitration and Conciliation Act, filing an application under Section 11(6) of the Arbitration and Conciliation Act is a crucial measure. Impasse due to lack of consensus among the parties to the arbitration agreement regarding appointment of arbitrator is sought to be resolved by intervention of the Court. Though the arbitration process in the strict sense commences thereafter before the arbitrator, by invoking Section 11(6) of the Arbitration and Conciliation Act, the party concerned is virtually submitting the disputes to the process of arbitration. Hence the filing of an application under Section 11(6) of the Arbitration and Conciliation Act would also fall within the ambit of Section 19(2)(a) of the Indian Partnership Act. Consequently, express authority is essential unless there is any usage or custom of trade to the contrary.

27. There is no unanimity of judicial opinions regarding the validity and binding effect of an award rendered in arbitration proceedings initiated without concurrence of all partners. If one of the partners initiates arbitration proceedings without express authority or ratification by the remaining partners and the proceedings culminate in an award there is possibility of the other partners disputing the validity and binding effect of the award. It is noticed that various High Courts have taken divergent views regarding the binding nature of such awards. Some have held that if the other partners do not object, same shall be treated as deemed ratification. Nevertheless if a partner is permitted to proceed with arbitration to resolve disputes arising from the business of the firm without express authority and consent of other partners, the same may not be in the interest of the partnership and may not bind the firm or remaining partners.

28. In the case at hand, in Annexure 5 notice issued by the Advocate, it was stated that the same was being issued under instruction from both partners. As noted above “to submit” in legal parlance denotes placing something for consideration before an authority having jurisdiction to examine the matter. Therefore, even if Annexure 5 notice was issued jointly by the partners, requirement of express authority cannot be ignored when one of the partners invokes Section 11(6) of the Arbitration and Conciliation Act, claiming that it is on behalf of the firm.

The outcome of the above discussion is that this arbitration request is not maintainable as it is submitted by one of the partners without the explicit authority of the other partner. It is, therefore, dismissed as not maintainable.

Result of the Case:

Dismissed.

Headnote prepared by A.R.
