IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arb. Case No. 116 of 2025

Reserved on: August 06, 2025

Decided on: August 21, 2025

Nitin Gupta ...Petitioner

Versus

Arrpit Aggarwal ...Respondent

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge

[1]*Whether approved for reporting?* ***Yes.***

For the petitioner : Mr. Mohit Chadha, Advocate (through Video Conference) and Mr. Shubham Sood, Advocate.

For the respondent : Mr. Desh Raj Thakur & Mr. Ravneet Kumar, Advocates.

Jyotsna Rewal Dua, Judge

This petition moved under Section 9 of the Arbitration and Conciliation Act, 1996 (in short the 'Arbitration & Conciliation Act') seeks:- **i)** To restrain the respondent/his representatives, assignees, agents, employees or any other persons acting on his behalf from carrying out any business operations in the name of M/s Vidhyasha Pharmaceuticals or transacting in the name of the Firm in any

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[1] *Whether reporters of Local Papers may be allowed to see the judgment? Yes.*

manner till the final adjudication of the arbitration proceedings; **ii)** Closure of the production activities of the partnership firm till the dissolution of the firm gets completed; **iii)** To restrain the respondent from selling, transferring, alienating, encumbering or disposing of any goods, stock-in-trade, raw materials, finished goods, or any part of the inventory lying at the partnership firm; and for freezing the bank accounts in the name of the partnership firm. Further prayer has been made to appoint a Receiver to take possession, custody and control of the entire inventory of the partnership firm including all stock-in-trade, raw materials, finished goods and any other assets forming part of the firm's inventory.

2. M/s Vidhyasha Pharmaceuticals was constituted as partnership firm on 24.06.2014 between S/Sh. Parkash Chand Bansal, Nitin Gupta (petitioner) and Arrpit Aggarwal (respondent). Sh. Parkash Chand Bansal retired from the partnership firm. The firm was reconstituted on 06.01.2015 between the remaining two partners who had 50% shares in the net profits and losses of the partnership business. Both the partners (parties herein) are real cousins. The partnership firm was to manufacture pharmaceutical products, medicines, tools, dyes and also to do service job work.

2(i) **The case of the petitioner** is that:- (i) Partnership constituted on 06.01.2015 was 'at will' governed by the Indian

Partnership Act, 1932 (in short the 'Partnership Act'). Irreconcilable differences have now cropped up between the two partners: On 26.05.2025, petitioner issued notice of dissolution of the partnership to the respondent invoking Section 43 of the Partnership Act. Petitioner also got the notice of dissolution of the partnership firm published in the newspapers (Himachal Tribune & Delhi Tribune) on 15.06.2025. The partnership firm stood dissolved on the date of publication of the notice; (ii) Respondent has got no right to carry on business of partnership firm from 26.05.2025 or alternatively from 15.06.2025 onwards; (iii) Petitioner has filed Arbitration Case No. 203 of 2025 in this Court under Section 11 of the Arbitration & Conciliation Act seeking appointment of an Arbitrator.

2(ii) Learned Counsel for the petitioner drawing support from Sections 43, 46, 47 & 53 of the Partnership Act urged that petitioner has a right to seek the claimed relief against the other partner. On dissolution of the partnership firm, it's business needed winding up. Respondent is required to be restrained from carrying out the partnership business till the appointment of Arbitrator/ adjudication of dispute by the competent authority. All actions pursuant to partnership deed needed to be stopped. Production activity in furtherance of partnership business was also required to be halted.

In support of above submissions reliance was placed upon *Ashok Kumar Mittal vs. Ashwani Kapoor & Anr.*[2] and *Ravinder Singh Ahluwalia of Mumbai Indian Inhabitant vs. Kuljinder Singh Ahluwalia of Mumbai Indian Inhabitant & Ors.*[3].

a. In *Ashok Kumar Mittal* [2] both the partners of the firm had filed Section 9 petitions. One partner sought protection as an interim measure to restrain the other partner from obstructing him in running the hotel and also to restrain him from getting revoked the licence granted to the partnership firm to run the hotel. The other partner had also petitioned to restrain the first partner from running business of the firm and using goodwill, assets & properties, books of accounts etc. of the partnership business, till Award was made by the Arbitrator. In the facts of the case, Hon'ble Delhi High Court held that as per Section 43 of the Partnership Act a partnership firm 'at will' may be dissolved by any partner giving notice in writing to the other partners of his intention to dissolve the firm and the firm shall stand dissolved from the date mentioned in the notice as the date of dissolution or if no date is

[2] AIR 2005 Delhi 323
[3] Arb. Petition (Lodging) No. 375 of 2009, decided on 07.05.2009, High Court of Bombay.

mentioned from the date of the communication of the notice. According to Section 47 of the Partnership Act after the dissolution of the firm, the authority of each partner to bind the firm and the other mutual rights and obligations of the partners continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the firm and to complete the transactions begun but unfinished at the time of the dissolution but not otherwise. Section 46 of the Partnership Act says that every partner has a right to have the property of the firm applied in payment of debts and liabilities of the firm and to have the surplus distributed amongst the partners. Sections 46 & 47 convey that once the firm is dissolved no partner has a right to take over and continue its business to the exclusion of the others except so far as it may be necessary to wind up the affairs of the firm and to complete the transactions begun but not unfinished at the time of the dissolution. Section 53 of the Partnership Act creates a further right in every partner of the dissolved firm or his representative, in the absence of a contract to the contrary, to restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm

for his own benefit until the affairs of the firm have been completely wound up. Following the ratio of *Vidya Devi vs. Mani Ram*[4] and *Tilak Chand Jain vs. Darshan Lal Jain*[5] it was held that none of the partners can be permitted to forcibly oust other partners and take over the business driving others to go to Courts or before the Arbitrators. Courts cannot encourage the tendency to grab business of a dissolved firm by some of the partners only to the exclusion of others. Where the control of business is forcibly retained by one of the partners to the exclusion of others, interference of the Court is essential to put an end to highhandedness and protect the interests of an ousted partner, who is knocking at the doors of the Courts. In such cases, the Receiver has to be appointed as a course. However, exception was carved out in such cases where the outgoing partner appears to be himself not participating in the partnership business before the dissolution of the partnership or holds only a minor share in the partnership firm or where the partners under the control of the dissolved Firm are majority share holders

[4] 1974 Rajdhani LR 346
[5] AIR 1985 J&K 50

and appear to be bonafidely trying to wind up the business and complete the commitments of the firm prior to dissolution. The appointment of a Receiver is thus discretion of the Court. Receiver has to be appointed only when it appears to be just and convenient but in such like cases where one partner is taking undue advantage out of the assets and business of a dissolved firm and is trying to exclude other partners by show of force, appointment of Receiver is just and convenient to make parties abide by law and not go by their muscle power. The forcible ousting of a partner by another and use of the assets of a dissolved firm by one only is an ample proof of misconduct and the intention of holding over to make undue gains for himself and undue loss to the ousted partner. In the facts of said case, it was concluded that one of the partners had taken over physical control of the partnership assets which according to the other partner was after illegally & forcibly ousting him from the business, accordingly receiver was appointed.

b. *Ravinder Singh Ahluwalia*[3] was a case where a partnership firm 'at will' had been dissolved by notice. Hon'ble Bombay High Court held that Sections 43, 46, 47 &

53 of the Partnership Act will take their own course as the firm stood dissolved. Once the firm is dissolved, no partner has a right to continue the business of the firm except for winding up and to complete the commitments prior to dissolution and not day to day business of the firm as it was prior to the dissolution. Also the parties need to proceed for final settlement of the accounts between the partners and distribution of the assets/cash after considering the liabilities of the dissolved firm. No one partner excluding the others can do the partnership business. Therefore, in case where there are serious disputes and differences, it is just, convenient and necessary to appoint a Receiver as contemplated under Order 40, Rules 1 & 2 of the Civil Procedure Code.

2(iii) **Learned Counsel for the respondent** disputed the nature of partnership firm 'at will' as projected for the petitioner. As per respondent, the partnership firm was not 'at will'. It was strongly urged for the respondent that Clause 8 of the partnership deed restrained the partners not only from selling, assigning or transferring their share but also from parting with their share or interest in the partnership business without the consent of other

partner in writing. This Clause according to the learned counsel for the respondent would imply that partnership could be dissolved by one partner only with the consent of the other partner. In case one partner wanted to opt out from the partnership firm, he was required to take consent of the other partner, partnership firm being a family business of two partners (two cousins), to enable the other partner to continue with the business by adopting requisite modalities in case he was interested to do so. According to the learned counsel for the respondent, in view of the clauses in the Partnership Deed, dissolution of the partnership firm was not governed by Section 43 but by Section 44(c) & (d) of the Partnership Act. Learned Counsel also urged that neither the petitioner has established *prima facie* case in his favour concerning alleged dissolution of the Partnership firm nor balance of convenience exists in petitioner's favour. It was urged that irreparable loss and injury will be caused to the partnership firm & respondent by the closure of the partnership business altogether as prayed by the petitioner. More than hundred employees engaged by the partnership firm will be rendered jobless. Also about eleven-hundred approvals/licences granted to the partnership firm over a long operation period of partnership business would become useless causing irreparable loss and injury to the partnership firm and consequently to the respondent as well who

had not only been carrying on business of the partnership firm but had been carrying it effectively & efficiently. The firm was running in profit and the petitioner as partner has equal share in the same. Petitioner was and is also equally involved in running of partnership business. No irreparable loss and injury shall be caused to the petitioner in case the partnership firm is permitted to continue the partnership business with due maintenance of the accounts till the dispute is adjudicated by the appropriate authority.

Reliance in support of the submissions was placed upon:- *Erach F.D. Mehta vs. Minoo F.D. Mehta*[6]*; Suresh Kumar Sanghi vs. Amrit Kumar Sanghi & Ors.*[7]*; Kishore Samrite vs. State of Uttar Pradesh & Ors.*[8]*; Arcelor Mittal Nippon Steel India Ltd. vs. Essar Bulk Terminal Ltd.*[9]*; Kanhai Foods Ltd. vs. A & HP Bakes*[10]*.*

2(iv) Apart from above, both the sides have also levelled **allegations against each other on facts**. According to petitioner, the respondent has brought the firm to losses; The act and conduct of the respondent has been dubious; Respondent has been instrumental in manufacturing the products under the partnership firm for the benefit of another firm where he himself is a partner

[6] AIR 1971 Supreme Court 1653
[7] AIR 1982 Delhi 131
[8] (2013) 2 SCC 398
[9] (2022) 1 SCC 712
[10] R/First Appeal No. 2638 of 2021 a/w R/First Appeal No. 2639 of 2021, High Court of Gujarat at Ahmedabad, decided on 10.06.2022.

alongwith his family members; The manufactured products are being supplied by the respondent to that entity at rates causing prejudice to the partnership firm with intent to have unjust enrichment. Allegations of respondent having his own competing interest elsewhere have also been levelled. Several other allegations on facts have been levelled against the respondent. These have been summed up by projecting that mutual trust between the parties has broken down rendering continuation of partnership untenable. Similarly, respondent has levelled allegations against the petitioner of having incorporated competing entity in the name of his wife and thereafter diverting the key clientage of the partnership firm to that competing entity; Unauthorized withdrawal of huge amount by the petitioner from the partnership accounts has been pleaded. Several other allegations on facts have been levelled against the petitioner.

3. I have heard learned counsel for the parties and considered the case file.

4. Consideration

For the purpose of adjudication of this petition, it is not necessary to decide the veracity of the allegations & counter allegations levelled on facts by the parties against each other. The

crucial aspect to be determined is as to whether interim reliefs as prayed for by the petitioner are liable to be granted:-

4(i) It will be appropriate to first reproduce relevant Clauses of the partnership deed dated 06.01.2015:-

> "2. That the partnership firm shall be addition to the above mentioned previous work of manufacturing of tools and dies (sic dyes) and service job work shall also additionally do the work of manufacturing of pharmaceuticals products Medicines etc. in partnership firm.
>
> … … …
>
> 8. That no partner shall entitled to sell, assign and transfer or otherwise part with his share or interest in the same, partnership business without the consent of other partner in writing.
>
> 9. That no outside liability of the partner was lieu (sic due) on the assets of the partnership business.
>
> 10. That the partnership was at will and was to be governed by the Indian Partnership Act, 1932.
>
> 11. That if during the continuance of the said partnership business any party to this deed dies, his share in good-will capital, assets, liabilities and undivided profit was belongs to his legal representatives who will be deemed to continue as partner on the same terms and conditions as the deceased.
>
> 12. That the partners were striving sincerely and honestly for the progress and promotion of the partnership business and no salary was paid to the partners for their working for the partnership business.
>
> 13. That in case whenever arises any dispute in relation to the said partnership business its was to be referred to the

> sole Arbitrator under the Indian Arbitration Act, decision of arbitrator so appointed for the purpose was be final and binding on both the partners."

4(ii) According to the petitioner, in view of Clause 10 of the partnership deed, the partnership was 'at will'. Therefore, as per Section 43 of the Partnership Act, it could be dissolved by the petitioner by giving notice in writing to the respondent of his intention to dissolve the firm:-

> "43. Dissolution by notice of partnership at will. – (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
>
> (2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is no mentioned, as from the date of the communication of the notice."

It is the contention of the petitioner that he had issued notice for dissolving the firm on 26.05.2025; The said notice was published in the news papers on 15.06.2025; The partnership firm stood dissolved from 26.05.2025 or alternatively from the date of publication of the notice in the news papers on 15.06.2025. Pressing into service Sections 46, 47 & 53 of the Partnership Act (extracted herein after), it was contended that on dissolution of the partnership firm the petitioner is entitled to seek the interim reliefs

which he has prayed for in the instant petition as on dissolution of a firm every partner in absence of a contract between the parties to the contrary is entitled to restrain the other partner from carrying on a similar business in the name of the firm or from using the property of the firm for his own benefit until the affairs of the firm have been completely wound up; On dissolution of the firm its property is to be applied in payment of debts and liabilities of the firm; The surplus is to be distributed amongst the partners according to their rights.

> "46. Right of partners to have business wound up after dissolution. – On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.
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> 47. Continuing authority of partners for purposes of winding up. – After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:
>
> Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

… … …

53. Right to restrain from use of firm name or firm property. – After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name."

4(iii) According to the respondent, in view of Clause 8 of the partnership deed the petitioner not only could not sell, assign or transfer his share/interest in the partnership business but also was not even entitled to part his share or interest in the partnership business without consent of the other partner in writing. According to the respondent, the partnership deed though confirms infinite duration of the partnership business but also provides the mechanism for its determination in terms of Clause 8 of the partnership deed which is by mutual consent. Therefore, despite Clause 10 of the partnership deed terming it 'at will' it has to be construed to be not 'at will' in view of Clause 8. Section 7 of the Partnership Act lays down characters of 'partnership at will' as under:-

> **"**7. Partnership at will. – Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will".**"**

According to the respondent, the partnership deed between the parties was not 'at will', therefore, its dissolution in the given facts can only be in accordance with Section 44 (c) & (d) of the Partnership Act, which read as under:-

> "44. Dissolution by the Court – At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:-
>
> (a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;
>
> (b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;
>
> (c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;
>
> (d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;

> (e) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order 21 of the First Schedule to the Code of Civil Procedure, 1908, or has allowed it to be sold in the recovery of arrears of land-revenue or of any dues recoverable as arrears of land-revenue due by the partner;
> (f) that the business of the firm cannot be carried on save at a loss; or
> (g) on any ground which renders it just and equitable that the firm should be dissolved."

4(iv)(a) In *Adhunik Steels Ltd. vs. Orissa Manganese & Minerals (P) Ltd.*[11] , Hon'ble Apex Court held that in exercise of power under Section 9 of the Arbitration & Conciliation Act, an order, for protection, for the preservation, interim custody or sale of any goods, which are subject matter of the arbitration agreement and such interim measure of protection as may appear to the Court to be just and convenient, can be passed.

The object of Section 9 of the Arbitration & Conciliation Act is to preserve the subject matter and secure arbitration. In the guise of praying interim relief under Section 9 petition, relief of nature destructive to the main subject matter cannot be granted. Filing of an application by a party by virtue of its being a party to an arbitration agreement is for securing a relief which the court has

[11] (2007) 7 SCC 125

power to grant before, during or after arbitral proceedings by virtue of Section 9 of the Arbitration & Conciliation Act. The relief sought for in an application under Section 9 of the Arbitration & Conciliation Act is neither in a suit nor a right arising from a contract. The right arising from the partnership deed or conferred by the Partnership Act is being intended to be enforced in the Arbitral Tribunal/competent forum; The Court under Section 9 is only to formulate interim measures so as to protect the right under adjudication before the Arbitral Tribunal from being frustrated. [Reference: *Firm Ashok Traders & Anr. vs. Gurumukh Dass Saluja & Ors.*[12]]

It is not disputed that approximately eleven hundred approvals/licences for different medicines/pharmaceutical formulations have been lawfully granted to the partnership firm over the period of its operation. It is also not in dispute that more than one hundred employees are on the rolls of the partnership firm. Both the partners i.e. petitioner & respondent are cousins having 50% share each in profit & loss of partnership firm.

It has been strongly emphasized for the respondent that the partnership firm is not a loss making enterprise. Endeavour has been made to demonstrate this on the basis of contemporary record.

[12] (2004) 3 SCC 155

This assertion has not been seriously rebutted at this stage for the petitioner though several allegations on facts have been made against respondent's working the partnership business causing loss to the firm. Respondent has also alleged systematic diversion of prime clientage of the partnership firm by the petitioner to a competitive entity i.e. M/S Kantil Pharmaceuticals Pvt. Ltd. statedly managed by the petitioner's family members while remaining active partner in M/s Vidhyasha Pharmaceuticals. Petitioner has not rebutted these assertions but has levelled his own allegations against respondent's having competing interest in another firm – M/S Akkodis Pharmacia. Respondent has also alleged petitioner's concealing transfer of ₹1.58 Crore from the partnership firm's account to his personal account. Respondent has also refuted petitioner's allegation of respondent solely handing the partnership firm. It has been asserted for the respondent that petitioner has remained actively involved in the partnership business until just before committing the alleged bank transaction, that the petitioner had consented to respondent's initiating vendors' payments on 05.04.2025 which were eventually processed on 08.04.2025.

Petitioner has also levelled his own allegations against the respondent of simultaneously being partner of another competitive entity and manufacturing & supplying the products to that entity at

rates causing loss to the partnership firm etc. Nonetheless, an important aspect that cannot be ignored at this moment is that the partnership firm – M/S Vidhyasha Pharmaceuticals is a running concern. At this stage, it does not appear to be a case where the respondent has forcibly ousted the petitioner from the partnership business. It is not petitioner's case that he is not getting his share from partnership business. In fact, it is the petitioner who wants the partnership business to be closed.

4(iv)(b) At this stage, it will be appropriate to refer to *M.O.H. Uduman & Ors.. vs. M.O.H. Aslum* [13], wherein though a clause of the partnership deed characterized it to be at will but while interpreting different clauses and the deed as a whole, the Apex Court reconciled the clauses & held that the deed expressly provided duration namely existence of at least two partners. So long as two partners remain the firm cannot be dissolved unilaterally, a partner may only withdraw and receive payment of his share. Relevant paras read as under:-

> "14. It is a settled cannon of construction that a contract of partnership must be read as a whole and the intention of the parties must be gathered from the language used in the Contract by adopting harmonious construction of all the clauses contained therein. The cardinal principle is to be as

[13] (1991) 1 SCC 412

certain the intention of the parties to the contract through the words they have used, which are key to open the mind of the makers. It is seldom that any technical or pedantic rule of construction can be brought to bear on their construction. The guiding rule really is to ascertain the natural and ordinary sensible meaning to the language through which the parties have expressed themselves, unless the meaning leads to absurdity.

… …

18. Giving our anxious consideration to the controversy, we have no hesitation to reach the finding and hold that the duration of the partnership has been expressly provided in the deed, namely, that the partnership will continue "till there are two partners" and that, therefore, it is not a partnership at will. Thereby, the respondent has no right to dissolve the partnership except to seek accounting for the period in dispute or his right to withdraw or retire from partnership and to take the value of his share in the partnership either by mutual agreement or at law in terms of the partnership deeds Exs. B-1 and B-2."

Karumuthu Thiagarajan Chettiar & Anr. vs. E.M. Muthappa Chettiar [14] held as under with regard to exceptions to 'partnership at will':-

"(6) … … Now S. 7 contemplates two exceptions to a partnership at will. The first exception is where there is a provision in the contract for the duration of partnership; the second exception is where there is provision for the determination of the partnership. In either of these cases the

[14] AIR 1961 SC 1225

> partnership is not at will. The duration of a partnership may be expressly provided for in the contract; but even where there is no express provision, courts have held that the partnership will not be at will if the duration can be implied. See Halsbury's Laws of England, Third Edition, Vol. 28, p. 502, para 964, where it is said that where there is no express agreement to continue a partnership for a definite period there may be an implied agreement to do so." … …

Interpreting clauses of partnership deed, Hon'ble Apex Court further held that:-

> "… … It is clear that' the partnership was for the sole business of carrying on the managing agency and therefore by necessary implication it must follow that the partnership would determine when the managing agency determines. Therefore on the terms of the contract in this case, even if there is some doubt whether any duration is implied, there can be no doubt that this contract implies that the partnership will determine when the managing agency terminates. In this view the partnership will not be a partnership at will as S. 7 of the Act makes it clear that a partnership in which there is a term as to its determination is not a partnership at will. Our attention was drawn in this connection to a term in the contract which lays down that either partner may withdraw from the partnership by relinquishing his right of management to the other partner. That however does not make the partnership a partnership at will, for the essence of a partnership at will is that it is open to either partner to dissolve the partnership by giving notice. Relinquishment of one partner's interest in favour of the other, which is provided in this contract, is a very

different matter. It is true that in this particular case there were only two partners and the partnership will come to an end as soon as one partner relinquishes his right in favour of the other. That however is a fortuitous circumstance; for, if (for example) there had been four partners in this case and one of them relinquished his right in favour of the other partners, the partnership would not come to an end. That clearly shows that a term as to relinquishment of a partner's interest in favour of another would not make the partnership one at will. We may in this connection refer to *Abbott v. Abbott*[15]. That was a case where there were more than two partners and it was provided that the retirement of a partner would not terminate the partnership and there was an option for the purchase of the retiring partner's share by other partners. It was held that in the circumstances the partnership was not at will and it was pointed out that only when all the partners except one retired that the partnership would come to an end because there could not be a partnership with only one partner. We are, therefore, in agreement with the High Court that the contract in this case disclosed a partnership the determination of which is implied, namely, the termination of the managing agency and, therefore, under S. 7 of the Act it is not a partnership at will. In the circumstances it is unnecessary to consider whether the case will also come under S. 8 of the Act."

In the instant case, no doubt Clause 10 of the Partnership deed labels the firm to be 'at will' yet Clause 8 of the deed categorically restrains either partner from selling, assigning,

[15] 1936-3 All ER 823

transferring or otherwise parting with his share or interest without written consent of the other partner. Respondent's contention of words 'otherwise parting with' having expansive meaning including unilateral dissolution, retirement, withdrawal etc., assumes significance – It will have to be adjudicated as to whether such clause was a conscious safeguard to preserve continuity in two partners' firm in order to prevent surprise departure leading to sudden collapse of business. Whether generalized 'at will' character of the partnership business under Clause 10 would yield to specific contractual bar in Clause 8 of the deed, is another question and also whether the partnership deed confers its indefinite duration but requires mutual consent for exit. Simply because Clause 10 of the partnership deed refers to the partnership as 'at will', therefore, is not sufficient in the given facts to conclude at this stage that it was so and unilateral dissolution was permissible. Petitioner also comprehends this and perhaps for this reason while issuing notice for dissolution has prayed for a declaration for dissolving the partnership firm alongwith rendition of accounts:-

> "11. That in view of above, it is clear that disputes between the parties pertains to financial misappropriation, breach of fiduciary duties, and gross mismanagement by you, the addressee, which have rendered the continuation of the partnership Firm practically impossible and legally

untenable. Accordingly our Client in the arbitral proceedings shall be raising claims, including but not limited to:

a. Declaration of that the Partnership Firm stands dissolved, alongwith rendition of accounts;

b. A direction for refund of the amounts which have been misappropriated and illegally withdrawn from Firm's account by you, the addressee, with interest from the date of withdrawal till realization;

c. An award of damages for loss of goodwill, reputational harm, and disruption of our Client's business;

Our Client is reserving its rights to add any further claims arising out of or in connection with the disputes set out hereinabove which our Client deems necessary for proper an complete adjudication of the present dispute.

… …

14. In view of the various disputes and events of default attributable to you the addressee, as briefly set out hereinabove, our Client asserts valid and enforceable claims against you the addressee, arising from the losses sustained by our Client due to the unlawful acts committed by you the addressee. Accordingly, our Client hereby invokes the arbitration clause as contained in Clause 13 of the Partnership Deed dated 06.01.2015, for the purpose of adjudicating the resolving all outstanding disputes between you, the addressee, and our Client, as enumerated above and is seeking reference of the same to arbitration."

Petitioner has issued notice dated 26.05.2025 *inter alia* for declaration that firm stands dissolved. This declaration is yet to come from the competent forum. Therefore, till dissolution of firm is

declared in the appropriate proceedings, the relief claimed as an interim measure in this petition on the count that firm stands dissolved cannot be granted. Simply because Clause 10 of the partnership firm terms the partnership to be 'at will' would not be enough to hold so given the other Clauses of the partnership deed and the factual position of the case for the purpose of granting interim relief at this stage. Interpretation of Clauses 8, 10 & 11 of the partnership deed may also lead to a possible inference that parties entering into contract were aware that in case a partner is allowed to part with his share/retire, this would automatically result into dissolution of the firm and in order to protect continuity of the business and save it from abrupt disruption, this Clause was inserted restricting the partner from parting his share in the partnership business without consent of the other partner so that business is continued as long as possible and is not abruptly halted at the sweet will of one of the partners. Whether Clause 10 in such circumstances would have overriding effect over the other Clauses is a matter that is required to be adjudicated by the Arbitrator/competent forum where the petitioner would be seeking declaration for dissolution of the partnership firm.

4(iv)(c) *Arvind Constructions (P) Ltd. vs. Kalinga Mining Corporation & Ors.*[16] holds that power under Section 9 of the Arbitration & Conciliation Act is also to be exercised on the touchstone of principles applicable for grant of interim injunctions under the Civil Procedure Code. *Arcelor Mittal Nippon Steel India Ltd.*[9] holds that:-

> "88. Applications for interim relief are inherently applications which are required to be disposed of urgently. Interim relief is granted in aid of final relief. The object is to ensure protection of the property being the subject-matter of arbitration and/or otherwise ensure that the arbitration proceedings do not become infructuous and the arbitral award does not become an award on paper, of no real value.
> 89. The principles for grant of interim relief are (i) good prima facie case, (ii) balance of convenience in favour of grant of interim relief and (iii) irreparable injury or loss to the applicant for interim relief. Unless applications for interim measures are decided expeditiously, irreparable injury or prejudice may be caused to the party seeking interim relief."

The three point test – apart from existence of *prima facie* case, balance of convenience and irreparable loss to petitioner by non grant of interim relief, is also not satisfied at this stage. It is a running partnership concern which respondent claims of being run profitably. Both the parties have 50% share in the profits/losses.

[16] (2007) 6 SCC 798

Respondent's assertion of complete shutdown of partnership business affecting its 120+ employees has not been denied. Adverse impact of closure of partnership business, stopping manufacturing processes upon its 1100+ WHO-GMP Certifications, drug licences, approvals has also not been ruled out by the petitioner. Freezing of operational accounts of the firm altogether will also block legitimate transactions including payment of salaries, vendor payments, clearing statutory dues, suspension of medicines manufacturing, forfeiture of securities, loss of tenders, permanent loss of clientage and goodwill etc. The interim measure prayed in this petition would virtually paralyse day-to-day functioning of the firm. The interim relief prayed for by the petitioner does not amount to preservation or protection of the subject matter of the arbitration. Grant of such relief could eventually lead to destruction of the subject matter of the Arbitration i.e. the partnership firm. The subject matter of arbitration is petitioner's prayer for dissolving the partnership firm and for rendition of accounts.

5. For the foregoing reasons, no case for appointment of Receiver is made out at this stage. The interim reliefs as prayed for by the petitioner cannot be allowed to him at present. All interim orders stand vacated. Petitioner shall be at liberty to move for appropriate reliefs before the learned Arbitrator/competent forum. Till

such time, in view of legal notice issued by the petitioner on 26.05.2025 and for safeguarding the interest of the parties, it is ordered that while carrying on partnership business, none of the partners including the respondent shall alienate, encumber or create charge on partnership assets as on date. Respondent shall maintain true and correct account of all business transactions of the firm and shall submit the same to the Court for every quarter. Such statement of account for the period ending 30th September, 2025 be furnished by 31st October, 2025 and the subsequent statements shall be furnished by the end of month succeeding the quarter end.

Petition stands disposed of accordingly. It is however clarified that observations made in this order are only meant for deciding present petition and shall have no bearing on the merits of rival contentions of the parties which are to be adjudicated by the appropriate forum.

Pending miscellaneous application(s), if any, shall also stand disposed of.

Jyotsna Rewal Dua,
Judge

August 21, 2025 **(PK)**