

KAUP010008992023



**IN THE COURT OF II ADDITIONAL DISTRICT/COMMERCIAL
COURT, UDUPI DISTRICT**

Present : **Dinesh Hegde**, B.A., LL.B.,
II Addl. District Judge,
Udupi/Presiding Officer,
Commercial Court, Udupi.

Dated :- This the 25th day of April, 2024

Com. O.S. No.121/2023

Sarfaraz Munaf,
Partner, M/s Sea Line Trading (R)
Aged about 45 years,
S/o Abdul Munaf,
Residing at D No.6-2,
Beach Road, Near Malpe Beach,
Malpe, Udupi 576 108.

...Applicant/Defendant No.3

(By Sri. D.S., Advocate)

//VS //

1. Mr Siraj Ummer,
Aged about 51 years,
Son of Ummer,
Residing at D No.3-3-5F,



- "Sri Raksha",
Near St Jude Aotomobile Workshop
Beedu Marg, Ambalapady,
Udupi 576 103.
2. M/s Sea Line Trading,
A registered Partnership firm,
Represented by its Managing Partner,
having its office at D No.30-34-4,
Near Corporation Bank,
PO Malpe 576 108,
Udupi Taluk and District.
3. Mr Haneef Mohammed,
Managing Partner,
M/s Sea Line Trading (R)
Aged about 56 years,
Son of B M A Khader,
Residing at Flat No.704,
Mandavi Court, Court Road,
Udupi 576 101.
4. Ronald Manohar Karkada,
Partner, M/s Sea Line Trading (R)
Aged about 60 years
S/o Robert Karkada, residing at H No.6-29,
Shanthinagar, Udyavara, Udupi 574 118.
5. Shahid Masoud,
Partner, M/s Sea Line Trading (R)
Aged about 53 years
S/o Azimur rahaman
Flat no 804 mandavi court apartment



Opp. Udupi District Court, Court Road,
Udupi 576 101.

6. Mohammed Iqbal Shaikh,
Partner, M/s Sea Line Trading (R)
Aged about 57 years
S/o Mahmood Iqbal Shaik,
Residing at No.6-2-28A,
4MM, Mahalasa Block,
Shanthanand Residency,
Mission Hospital Road,
Udupi 576 101.
7. Salahaddin Saheb,
Partner, M/s Sea Line Trading (R)
Aged about 78 years
S/o Kodavoor Gafoor Saheb,
House D No. 32,
His Grace Apartment,
Martin Pais Road, Ashok Nagar,
Hathill, Mangalore 575 006.
8. Srikanth Bhat,
Partner, M/s Sea Line Trading (R)
Aged about 43 years
S/o Gopalakrishna Bhat,
Residing at No.4-22A, Mathru Vijaya,
Eshwar Nagara,
Near Mahalingeshwara Temple,
Kodavoor, Tenkanidiyoor 576 106,
Udupi taluk.

**.....Opponents/Plaintiff/
Defendants No.1, 2 and 4 to 8**



(By Sri. P.N.P.K.R., Advocate for plaintiff)
(By Sri. S.B.N., Advocate for D4)
(By Sri. B.M.V., Advocate for D7)
(By Sri. S.G.A., Advocate for D8)
(D1, 2, 5, 6 - Exparte)

ORDERS ON I.A.NO.III

This application is filed the Advocate for defendants under Section 8 (1) of the Arbitration and Conciliation Act, 1996 to refer the parties to the suit to Arbitration.

2. Application is accompanied by the affidavit sworn by the defendant No.3.
3. Advocate for the plaintiff filed objections.
4. Heard both side arguments.
5. The following points arises for my consideration:
 - 1) Whether the parties to the suit to be referred to Arbitrator in view of Arbitration clause in the deed of Partnership?



2) What order?

6. My answer to the above point No.1 in the **Negative** for the following:

REASONS

7. **Point No. 1 :** In the affidavit sworn by the defendant No.3 it is stated that 1st defendant is a partnership firm by means of a partnership deed dated 23.06.2015, the defendant No.3 was the second partners of the said firm. 4th and 3rd defendant retired from the partnership firm and plaintiff as well as defendant No.6 to 8 were admitted to the partnership vide admission cum retirement/reconstitution deed dated 26.04.2018. On 01.03.2019 the plaintiff retired from partnership firm by entering into a deed of retirement with the other partners of the said firm. While the document No.1 and 2 have produced by plaintiff himself, the admission cum retirement/reconstitution dated 26.04.2018 has been admitted and referred by the plaintiff in plaint documents



No.2, 9 and 10 and also the plaintiff in the notice wherein the plaintiff himself is a party to the dispute involved in this suit as arising between the partners of the 1st defendant's firm in the matters relating to the conduct of its business and enforcement of the terms and conditions of (i) the deed of partnership (ii) the admission cut retirement/reconstitution deed and (iii) reconstitution and deed of retirement i.e., the three deeds produced. In all the above three deeds clearly provide for resolution and disputes in accordance with the provisions of Arbitration and Conciliation Act 1996. Therefore, the defendant No.3 is filed this application to refer the dispute to the arbitrator.

8. In the objects to this application, the plaintiff has denied that the defendant No.3 and 4 retired from the partnership firm and it is also denied that the defendant No.6 to 8 were admitted to the said partnership through a admission come retirement/reconstitution deed dated 26.04.2018. On 01.03.2019 the applicants created a document alleging that the plaintiff



retired from the partnership firm and it is also false to state that defendants No.6 to 8 were admitted to the partnership vide an admission cum retirement/reconstitution deed dated 26.04.2018.

9. He has denied that admission cum retirement/reconstitution deed dated 26.04.2018 has been admitted and referred by the plaintiff in plaint documents and also in the notice. The plaintiff is not aware about alleged admission cum retirement/reconstitution deed dated 26.04.2018. Commercial Courts Act 2015 shall have an over riding effect over the Arbitration and Conciliation Act 1996. Hence, appeals under the Arbitration and Conciliation Act pertaining to Commercial dispute shall lie before the commercial courts. The plaintiff was never a partner of the the 1st defendant firm, but such documents were created by defendants to cheat and defraud and cheating and for recovery of money. The contents of those deeds are patently not valid and binding upon him. The plaintiff has relied upon those deeds only for collateral purposes to



establish his case and those deeds are not enforceable the application is barred by law of limitation. Therefore, application is liable to be dismissed.

10. In support of the contention of the defendant No.3 to refer the case to arbitration, he has relied upon a decision of the Hon'ble Supreme Court reported in **(2021) 2 SCC between Vidya Drolia and others Vs Durga Trading Corporation**, wherein it was held that, if the validity of the arbitration agreement cannot be determined on a prima facie, rules for refer to the arbitration.

11. Learned Advocate appearing for the plaintiff in his arguments submitted that in view of Section 69(2) of Partnership Act 1932 what ever the partnership deed relied by the defendants is unregistered documents and hence the application based on the unregistered partnership deed is not maintainable. On the other hand the learned Advocate appearing for the



defendant No.3 has argued that Section 69(2) Partnership Act 1932 applies only to institute the suit filed or on behalf of partnership firm and here the partnership firm is not plaintiff.

12. On perusal of the plaint, it is averred that the 1st defendant firm was doing business in Sea Food Trading and the defendant No.2 to 5 have demanded a sum of Rs.2,85,00,000/- as investment some where in the moth of June 2016. On investing the amount the defendant No.2 to 5 have promised and assured to take the plaintiff has partner of the firm. The defendants No.6 to 8 are also promised to joined the partners of the 1st defendant's firm. The plaintiff trusted and believed the defendants that they are all the partners of the firm and invested Rs.2,85,00,000/- which was directly transfer of the 1st defendant's firm with bank of Baroda and Axis bank. Out of the total amount of Rs.2,72,57,315/- was paid to the above said account of the firm and balance of Rs.12,42,685/- was paid by cash. These investments were made from August 2016 to 2017



in installments. This transaction was evidenced by agreement and deed of retirement and partners from the partnership firm dated 01.03.2019. The defendants suppressing the registered partnership firm dated 20.04.2018 and which is true partners. Though the registered partners are only the defendants No.2 to 5. Defendants No.6 to 8 are not partners who misrepresented, but they have joined the agreement and deed of retirement dated 01.03.2019. After realizing the defendants fraudulent intentions, he pressurized the defendants for refund of his investment. They issued a cheque dated 20.05.2019 and 06.06.2019 in favour of the plaintiff for Rs.95,00,000/-. Both the cheques towards part payment came to be dishonoured for which the plaintiff has filed private complaint before the JMFC, Udupi under Section 138 of the N.I. Act. They came for settlement for Rs.4,00,00,000/- including the interest. At the time of settlement the 2nd defendant handed over the original agreement and deed of retirement dated 01.03.2019 to the plaintiff. As per the compromise the



defendants issued cheques drawn to deed dates. The cheques were cannot dishonoured as account blocked. Sensing the fraud the plaintiff filed suit for recovery of money with interest.

13. Along with the written statement the defendant has produced the xerox copy of admission cum retirement/reconstitution deed, office copy of reply sent by 4th defendant to the notice of the plaintiff, GST registration certificate etc. Copy of the partnership deed dated 23.06.2015, deed of retirement of partners from partnership deed dated 01.03.2019. Admission come retirement/reconstitution deed dated 26.04.2018 are also produced. The partnership deed dated 23.06.2015 wherein the plaintiff is not a party to the partnership firm. Though it contains Arbitration clause in No.15 and any disputes are difference arises in respect of business of the partnership. The same shall be referred to Arbitrator in Arbitration and Conciliation Act 1996. The deed of retirement of partner from partnership deed to which the plaintiff is shown as



one of the party which was came into force on 01.03.2019 which contains Arbitration clause admission cum retirement/reconstitution deed dated 26.04.2018 reveal that the plaintiff is not a party to the said deed despite containing Arbitration clause. What ever the suit claim mentioned in the plaint are pertaining to earlier lending of money and plaint averment reveal that the plaintiff lent money to the defendants on his personal capacity without entering into any agreement containing arbitration clause. Therefore, subsequent deed in which the plaintiff is a party does not binding upon him to refer dispute to the arbitrator.

14. Therefore, the decisions relied by learned Advocate appearing for the defendant No.3 reported in (2021) 2 SCC is not applicable to the present case.

15. Whatever the suit claim of the plaintiff is not covered with an arbitration agreement containing arbitration clause The plaintiff is not claiming recovery of money based on mutual



agreement containing arbitration clause. Hence, question of referring the dispute to the arbitration does not arise. Therefore, I answered **point No.1 in the Negative.**

16. **Point No.2:** For the above reasons, I pass the following:

O R D E R

The I.A.No.III filed by the Advocate for defendant No.3 under Section 8(1) of Arbitration and Conciliation Act of 1996 is hereby dismissed.

(Dictated to the stenographer, transcribed by her, corrected and signed by me and then pronounced in open court on this the **25th day of April, 2024**)

(DINESH HEGDE)
II Addl. District Judge/P.O.,
Commercial Court, Udupi.