

IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA

Present: Sri. Mahesh.M., Additional Munsiff

Monday, the 11th day of August, 2025/ 20th Shravanam, 1947.

IA No.03/2024 in O.S. No. 542/2024

(Filed on 24.09.2024)

Petitioners/defendants 1, 2 & 5:-

1. M/s Bharath Agencies, Head Office near Iron Bridge, AS Canal Road, Cherthala, represented by Managing Partner, C R Jairaj, aged 62 years, S/o late Rajappan, Charankattu House, Kanichukulangara, Cherthala.
2. C R Jairaj, aged 62 years, S/o late Rajappan, Charankattu House, Kanichukulangara, Cherthala.
3. T.S.Salim, aged 68 years, S/o T.R.Sudhakaran, Thoppil House, Thannippuzha, Perumbavoor, Partner Bharath Agencies.

By Adv. K.Premkumar.

Cr. Petitioners/ Plaintiff & Defendants 3, 4, 6, 7, 8 & 9:-

1. Shyna Devaraj, aged 57, W/o C R Devaraj, Charankattu House, Kanichukulangara, S N Puram P O.
2. R.Anitha, aged 65 years, D/o late Rajappan, Illikattu House, Edappally.P.O, Ernakulam, Partner, M/s Bharath Agencies
3. R.Ambily, D/o late Rajappan, Charankattu House, Kanichukulangara, Cherthala, now residing at '964, Rosehedge Ct, Concord, CA 94521, USA.
4. Jyotsna Ben, aged 56, W/o T.S.Babu, Thoppil House, Near Nagarjunam Okkal P.O, Chelamattam Village, Kunnathunadu Taluk, Kalady, Ernakulam.
5. Aiswarya Babu, aged 19 years, Palekudy House, Kanjoor, Aluva, Ernakulam District.

6. Shubha Jairaj, aged 59 years, W/o C.R.Jairaj,
Charankattu House, Kanichukulangara, Cherthala
7. Anand Raj, aged 31 years, S/o C.R.Jairaj,
Charankattu House, Kanichukulangara, Cherthala.
**CP1 by Adv.N Balachandran, Adv.Bhupesh.B,
Adv.Aromal.S, Adv.Akhil. R.Babu, Adv.Sanaja.P.N,
CP3 by Adv.Mahesh Bhanu.S.
CP4 by Adv.Aysha Abraham.
CP5 by Adv.P.Vijayalakshmi,
CP6 & CP7 by Adv.Simily Abraham**

This petition having been finally heard on 19.07.2025 and the court on 11.08.2025 passed the following :-

ORDER

This is a petition filed by the petitioners under Sec.8 of the Arbitration and Conciliation Act for referring the subject matter of suit to arbitration.

2. Petition averments in brief are as follows:

The petitioners herein are the defendants No.1, 2 and 5 in the above suit. The 2nd petitioner is the Managing partner of the 1st petitioner partnership firm and the 3rd petitioner is a partner. The suit is filed seeking the following reliefs:

- a) Pass a decree declaring that the partnership deed dated 15.01.2018 to be the only valid partnership deed enforce binding on the first defendant firm and its partners.
- b) Pass a decree declaring the illegal documents purported to be partnership deeds dated 22.08.2023 and 26.08.2023, fabricated by the defendants 2, 3 and 5 defendants to be void ab initio and not binding upon the plaintiff, defendant 4, 6, 7 and the 1st defendant firm.

- c) Pass a decree of permanent prohibitory injunction to restrain, the defendants from alienating, encumbering, or creating third-party interest upon the plaint A. B and C schedule properties without the express consent in writing of all the partners of the firm and the legal heirs of the demised, partner, TS Babu as per the partnership deed dated 15.01.2018 and restraining the second defendant from paying salary from the firm to the defendants 8 and 9 who are transacting the business of similar nature to that of the first defendant firm in the vicinity of the first defendant firm.
- d) Allow the plaintiff to realise the cost from the defendant.
- e) Such other reliefs that are deemed to be fit and proper to be allowed by the court, during the trial and applied by plaintiff.

A copy of the partnership deed of the Bharat Agencies dated January 15, 2018, has been produced along with the plaint. The clause number 25 deals with Arbitration. It is as follows.

25. All disputes and questions which may arise during the continuance of the partnership or thereafter between the partners or their respective representatives or legal heirs concerning this Indenture of Construction or the application there of or any clause or thing therein contained on any account, valuation, division of assets, debts and liabilities to be made here under or any other matter in any anyway relating to the partnership business or the affairs thereof or the rights, duties or liabilities of any person here under shall be referred to Single Arbitrator If the party agree upon one, if not, two Arbitrators to be appointed by the parties to the dispute or difference in accordance with and subject to provisions of the Arbitration and Conciliation Act or any other subsisting modification there of or substituted enactment thereof. Such reference to arbitration shall be a condition preceding to the obtaining of any relief in any court of law in respect of any such dispute or difference.

The plaintiff has filed a suit as OS.372/2023 for an injunction and other relief. In that suit, a petition under Section 8 of the Arbitration and Conciliation Act was filed, which was heard and decided. The court found that the subject matter of the suit is arbitrable and that the suit is not maintainable, referring it to arbitration by order dated September 13, 2024. This suit has been filed with malicious intent, knowing that OS.372/2023 would not be maintainable, in an attempt to circumvent the decision rendered in that suit. With reference to the partnership deed dated January 15, 2028, the 4th defendant, Ambily, a partner voluntarily retired from partnership, filed an Arbitration Original Petition before the Honorable High Court, and the matter was referred to arbitration. Advocate Jessy George has been appointed as the sole arbitrator, and the proceedings are currently pending. Defendants 6 to 9 are unnecessary parties to this suit. Defendants 6 and 7 are recognized as the legal heirs of the deceased partner, T.S. Babu. Clauses 15 and 16 of the partnership deed address the death of a partner and the retirement of a partner. The partnership does not dissolve upon the death of a partner; the remaining partner may continue the business. Therefore, Defendants 6 and 7 are unnecessary parties to this suit. There is an ongoing dispute between Defendants 6 and 7 regarding the legal heir-ship of the deceased Babu, with suit OS No. 396/2023 pending before this court. Defendants 8 and 9 are the wife and son of the second defendant. They are merely employees of the firm and have no interest in the business. No relief has been sought against them; hence, they are unnecessary parties to these proceedings. The plaintiff's intention in incorporating third parties into the partnership deed in these proceedings appears to be an attempt to evade arbitration. Even if third parties to the arbitration agreement are included in the party array, the subject matter of the suit remains arbitrable. Before proceeding with the matter, it should be noted that Clause 25 of the partnership deed constitutes an arbitral agreement as per

the provisions of the Arbitration and Conciliation Act. Therefore, the matter must be referred to arbitration under Section 8 of the Act of 1996 before any further proceedings can take place. Hence this petition is filed to refer the matter for arbitration.

3. Respondent No.1 filed objection contending as follows:-

The petition is not maintainable either in law or on merits. The petition is filed only on an experimental basis trying to evade a meritorious adjudication by this court, which would expose the 2nd defendant's exploitation of the 1st defendant firm's assets, funds and resources to his own personal gain. The defendants 8 & 9 are not parties to the partnership deed. The defendants 8 & 9 are necessary parties to the suit since they are interested in the reliefs claimed and is directly affected by the reliefs. It is admitted by the petitioner in his objection that the defendants 8 & 9 are salaried employees of the 1st defendant firm. Moreover, the definite case of the plaintiff is that the 2nd defendant, with the aid of 8th and 9th defendants, is siphoning of the funds, resources, long standing clients and funds of the 1st defendant firm for the benefit of a firm constituted by them, which is transacting the exact business as that of the 1st defendant firm. In the given circumstances, the applicability of arbitration clause in the partnership deed relied on by the plaintiff cannot be gravitated. It was shocking to recently learn that the 2nd defendant was also a partner of the firm "Charankat Ceramics and Granites" and he hastily retired from the said firm when the plaintiff herein instituted OS No.372/2023 pointing out the mis-appropriation and mal-administration of the 1st defendant firm by the 2nd defendant. The firm "Charankat Ceramics and Granites" was constituted on 01.12.2018 and registered with the Registrar of Firms on 16.02.2019. As on the date of its constitution, the 2nd defendant, 8 and 9 defendants and one Vivek Raj CJ, who is the younger son of the 2nd defendant and 8th defendant, were partners of the

firm. During this time, the 2nd defendant was, and continues to be, the Managing Partner of the 1st defendant firm, while the 8 and 9 defendants were, and continue to be, salaried employees of the 1st defendant firm. As per the stipulations in the partnership deed of 2018 and the provisions of The Indian Partnership Act, 1932 a partner has the right to inspect the books of accounts of the firm which is to be placed at the Head Office of the firm. But the plaintiff is not even permitted to enter inside the head criminal breach of trust and mal-administration done by the 2nd defendant Office by the 2nd defendant. This is done to cover up the misappropriation, with the aid of the defendants 8 and 9 within the firm. The plaintiff has produced the extract of the register maintained at the office of The Registrar of Firms, Thiruvananthapuram, which was issued to the plaintiff upon application. The plaintiff herein is entitled to share of profits of the 1st defendant firm at a rate of Rs.10,000/-(Rupees Ten Thousand Only). The 2nd defendant being the Managing Partner of the 1st defendant firm having absolute dominion over the assets, resources and funds of the firm, has the fiduciary duty to hold the share of profit in trust for each of the partners, and is duty bound to disburse the same every month. But the 2nd defendant herein fraudulently manipulated the books of account and mis-appropriated the share of profits belonging to the plaintiff and disbursed the same to the defendants 8 and 9, thereby committing criminal breach of trust. Moreover, all other resources, funds, assets and client information of the 1st defendant firm is in the absolute dominion of the 2nd defendant managing partner, who is mis-appropriating the same for the benefit of his family business firm engaged in the same business as that of the 1st defendant firm. The lis involves questions of fraud, criminal breach of trust and mis-appropriation. It is a trite position of law that an Arbitrator is not competent to resolve questions relating to fraud, mis-appropriation and criminal breach of trust. It is hereby pointed out that the adjudication herein not

only affect the parties herein, but also the third parties who is keeping business relations with the 2nd defendant firm such as banking partners of the 1st defendant firm. The arbitral tribunal being a private for a deriving its powers from the 4 corners of the agreement between the parties, is not competent to adjudicate upon questions involving criminal breach of trust, mis-appropriation and fraud. It is submitted that O.S. No. 372/2023 and the present suit are distinct in nature, involving entirely different subject matters and parties. Furthermore, the issues for adjudication in both suits are separate and unrelated. Therefore, under no circumstances can the order passed in OS No.372/2023 be deemed applicable to the present proceedings. R. Ambily never retired defendant's imagination. It is evident that the 2nd defendant is attempting, from the firm. The said assertion appears to be a figment of the 2nd without legal basis, to usurp the business and resources of the firm for his scrutiny or escape the course of justice. Arbitration proceedings initiated personal gain. However, such unlawful conduct will not withstand judicial at the instance of R Ambily is going on. In the said proceedings also, the 2nd defendant is employing dilatory tactics to protract the meritorious adjudication. A plain reading of the plaint clearly indicates that all the defendants are necessary parties to the lis, including the legal heirs of the deceased T S Babu, who are indispensable for the just and effective adjudication of the present suit. It is further submitted that Clauses 15 and 16 of the Partnership Deed dated 15-01-2018 cannot be construed in a manner that permits the 2nd defendant, as the Managing Partner, to appropriate the share of a deceased partner to himself. In fact, the share of the deceased T.S. Babu has not been set apart for his legal heirs but has been wrongfully diverted for the benefit of defendants 2, 8, and 9. The admission that 8 and 9 defendants are the wife and son of 2nd defendant and that they are the salary drawing employees of the 1st defendant firm is correct. The averment that they are not necessary parties is

mis-leading. The definite case of the plaintiff is that the 2,8 and 9 defendants are siphoning the business, resources and funds of the 1st defendant firm to their newly established firm. Also, the funds of the firm including the share of profits of the firm are disbursed to the 8 and 9 defendants by the 2nd defendant, thereby draining the funds of the firm. The presence of the persons arrayed as defendants are absolutely necessary to adjudicate the present case. The subject matter of this suit is not arbitrable and requires a meritorious adjudication by a public for a to go in detail to the questions of breach of trust and misappropriation. Moreover, the case in hand requires the consideration of various documentary as well as oral evidence as per the provisions of The Bharathiya Sakshya Adhinayam, 2023, which is not possible in arbitration proceedings. The clause 25 of the partnership deed is not applicable to the case in hand owing to the aforementioned reasons. The deponent apprehends a meritorious consideration of the matter as it would expose the unlawful activities being committed in the firm. Hence, the petition is liable to be dismissed.

4. Respondent No.3 filed objection contending as follows:-

The petition is not maintainable. It is categorically denied that the respondent has retired from M/s The Bharath Agencies; as per the partnership deed dated 15.01.2018, the respondent remains an active partner. The suit involves serious allegations of fraud, misappropriation, and criminal breach of trust against the 2nd defendant and others. It is well-settled that disputes involving fraud cannot be referred to arbitration, as such matters require judicial scrutiny. The 8th and 9th defendants who are the wife and son of the 2nd defendant are employees of the firm and not parties to the partnership deed or any arbitration agreement. Arbitration is a contractual remedy and cannot bind non-signatories. The suit challenges fabricated partnership deeds dated 22.08.2023 and 26.08.2023, which are void ab initio and cannot support arbitration proceedings.

Petitioners have failed to show that all parties are bound by the arbitration clause. Referring criminal allegations and fraud to arbitration violates public policy. The dispute involves complex issues of partnership rights, property, and criminal conduct, necessitating judicial intervention. Although arbitration under the 2018 deed was initiated by the respondent, the Petitioners obtained a stay from the Hon'ble High Court on frivolous grounds, behind the respondent's back. They are now obstructing both judicial and arbitral proceedings, engaging in fraud, and abusing the process of law to delay and transfer the firm's business to a new partnership involving the 2nd, 8th and 9th defendants. Hence the petition is liable to be dismissed.

5. Respondent No.4 filed objection contending as follows:-

The petition is not maintainable. The petitioner's claim under the alleged Will of deceased Mr. Babu is already under litigation before this Court and the Munsiff's Court, Perumbavoor. Succession to partnership rights and settlement of accounts with the estate of a deceased partner involves complex legal issues requiring judicial determination. Despite ongoing proceedings with other legal heirs, the respondent's interest in Bharath Agencies must be protected. The suit raises serious allegations of fraud, criminal breach of trust, and misappropriation of partnership funds by the 2nd defendant, aided by the 8th and 9th defendants. Such criminal matters are non-arbitrable and require judicial oversight. The Supreme Court has consistently held that fraud vitiates proceedings and cannot be resolved through arbitration. Defendants 8 and 9 (wife and son of the 2nd defendant) are not partners and have no contractual relationship with the firm. They are salaried employees and not bound by any arbitration clause. Similarly, the 4th respondent and 7th defendant are not signatories to the partnership deed and cannot be compelled to arbitrate. The core issue is the protection of partnership assets being misappropriated by the 2nd

defendant, who, along with the 8th and 9th defendants, has floated a new partnership and is transferring the business and attempting to dispose of immovable properties of the 1st defendant. The 4th respondent stands to suffer significant loss, and the Court must safeguard his interests. As legal heirs of the deceased partner, the respondent has not entered into any fresh arbitration agreement. Their rights are governed by the Indian Partnership Act and succession laws. The dispute involves settlement of accounts, determination of the deceased partner's share, and misappropriation of his rights which are issues that require detailed judicial examination and cannot be resolved through arbitration. The suit also challenges fabricated partnership deeds dated 22.08.2023 and 26.08.2023, which are void ab initio. Arbitration based on such documents is illegal and contrary to public policy. Matters involving fraud, criminal conduct, and rights of legal heirs are inherently non-arbitrable and demand judicial intervention. Hence the petition is liable to be dismissed.

6. Heard both sides.

7. The following points are raised for consideration;

1. Whether this petition is allowable or not?
2. What is the order?

8. Point No.1 –

Before going into the merits of this petition, it will be apposite to briefly mention the plaint averments. The plaintiff, a partner in M/s The Bharath Agencies, a firm originally constituted in 1961 and last reconstituted by a deed dated 15.01.2018 has filed suit against several defendants, including the managing partner (2nd defendant), alleging serious misconduct. The firm, engaged in selling agricultural and sanitary products, has seen internal conflict due to the 2nd defendant's unethical practices, including forgery,

misappropriation of funds, and the creation of a competing business named “Charankat Ceramics and Granites,” registered under his wife and son (8th and 9th defendants), who are also salaried employees of the firm. The plaintiff claims her rightful salary of Rs. 10,000 per month has been unpaid for 25 months and diverted unlawfully to the 8th and 9th defendants. She has been denied access to inspect the firm’s accounts and fears further financial harm. In response to threats of expulsion, she filed OS No.372/2023 seeking an injunction, which prevented an illegal expulsion attempt via a memo dated 25/08/2023. The plaintiff asserts that the partnership deed in force does not permit expulsion, and any attempt to do so is void. She was only made aware of allegedly fabricated deeds dated 22.08.2023 and 26/08/2023 during proceedings in OP(c) No: 777/2024, and claims these documents were fraudulently introduced by defendants 2, 3, and 5. The plaintiff contends that the partnership deeds dated 22.08.2023 and 26.08.2023, produced by the 5th defendant, are fraudulent and were fabricated through collusion between the 2nd, 3rd, and 5th defendants with the intent to unlawfully expel her from the firm and misappropriate its assets. These deeds, which the plaintiff did not sign and which exclude other legitimate partners, falsely elevate the 2nd defendant’s share from 39% to 73% and misrepresent defendants 2, 3, and 5 as the sole partners, enabling them to exploit the firm’s goodwill and secure loans for personal gain. The plaintiff asserts that these deeds are void ab initio and do not bind her, defendants 4, 6, 7, or the firm itself. She further alleges that the 2nd defendant is committing fraud by diverting clients and funds to a competing business run by his wife and son (8th and 9th defendants), while disbursing inflated salaries to them. This conduct, coupled with the 2nd defendant’s declaration that he will sell firm properties without partner consent, constitutes a criminal breach of trust and poses serious harm to the firm and its legitimate partners. Consequently, the plaintiff has filed

the present suit to safeguard her rights and the firm's assets. In order to ascertain whether the issues involved in the suit are arbitrable in nature the following points have to be analysed in detail.

9. Applicability of the arbitration clause to the issues involved in the suit

The definite case of the petitioner is that a valid arbitration clause exists between the parties, incorporated as Clause No. 25 of the Partnership Deed dated 15.01.2018. According to the petitioner, the presence of the said arbitration clause mandates that the parties refer their disputes to arbitration, thereby ousting the jurisdiction of this Court to entertain the present suit. The first issue that arises for consideration is whether the arbitration clause is applicable to the factual matrix of the case at hand. As already noted, the suit has been instituted primarily seeking a declaration that the Partnership Deed dated 15.01.2018 is the only deed binding upon the partners. The plaintiff has also sought a further declaration that the two subsequent partnership deeds executed thereafter are void ab initio. Thus, the core dispute between the parties pertains to the determination of which partnership deed governs the affairs of the 1st defendant firm. In this context, it becomes imperative to examine whether the arbitration clause contained in the Partnership Deed dated 15.01.2018 is applicable to the present dispute. The arbitration clause as contained in the Partnership deed dated 15.01.2018 is reproduced hereunder

All disputes and questions which may arise during the continuance of the partnership or thereafter between the partners or their respective representatives or legal heirs concerning this Indenture of Construction or the application there of or any clause

or thing therein contained on any account, valuation, division of assets, debts and liabilities to be made here under or any other matter in any anyway relating to the partnership business or the affairs thereof or the rights, duties or liabilities of any person here under shall be referred to Single Arbitrator If the party agree upon one, if not, two Arbitrators to be appointed by the parties to the dispute or difference in accordance with and subject to provisions of the Arbitration and Conciliation Act or any other subsisting modification there of or substituted enactment thereof. Such reference to arbitration shall be a condition preceding to the obtaining of any relief in any court of law in respect of any such dispute or difference.

Upon a careful reading of Clause No. 25 of the Partnership Deed dated 15.01.2018, it is evident that the arbitration clause encompasses all disputes and questions arising during the subsistence of the partnership or after its dissolution, involving the partners, their legal representatives, or legal heirs, in relation to the following categories: (i) Interpretation or application of the partnership agreement; (ii) Any clause or term contained in the agreement; (iii) Matters concerning valuation, division of assets, debts, and liabilities; (iv) Any issue pertaining to the partnership business or its affairs; and (v) Rights, duties, or liabilities of any party involved. In order for the present dispute to fall within the ambit of the arbitration clause, it must necessarily relate to one or more of the aforementioned categories. On a perusal of the pleadings and reliefs sought by the plaintiff, it is discernible that the dispute does not pertain to the interpretation or application of any specific clause or term in the partnership agreement. Nor does it involve any issue of valuation, division of assets, debts, or

liabilities. Accordingly, categories (ii) and (iii) are not found to be applicable to the present factual scenario. Furthermore, the plaintiff seeks a declaration that the Partnership Deed dated 15.01.2018 is the only valid and binding deed governing the affairs of the 1st defendant firm, and that the subsequent deeds are void ab initio. This relief, in essence, does not directly engage with the rights, duties, or liabilities of the partners under the partnership agreement. It is more in the nature of a foundational challenge to the existence and validity of subsequent instruments. Therefore, category (v) is also excluded from applicability. The core issue that now arises for consideration is whether the disputes between the parties fall within the scope of categories (i) and (iv) of Clause No. 25 of the Partnership Deed dated 15.01.2018 namely, disputes relating to (i) the interpretation or application of the partnership agreement, and (iv) any matter concerning the partnership business or its affairs. As already noted, there are three partnership deeds placed before this Court, all purporting to govern the affairs of the 1st defendant firm. The plaintiff asserts that the first partnership deed dated 15.01.2018 is the only valid and binding agreement. It is her case that the two subsequent deeds dated 22.08.2023 and 26.08.2023 are forged documents, created with the ulterior motive of unlawfully expelling her from the partnership. The plaintiff further contends that although she is named as a partner in the second deed dated 22.08.2023, the said document does not bear her signature. Notably, Clause 24 of that deed introduces a provision enabling the expulsion of any partner upon agreement by the majority of the other partners. It is alleged that this clause was invoked to expel the plaintiff, following which the third partnership deed dated 26.08.2023 was executed, excluding her from the firm. In light of these averments, the plaintiff seeks a declaration that the second and third partnership deeds are void ab initio and do not bind the firm. The petitioner, who is arrayed as the 2nd defendant in the suit, contends that

the dispute is arbitrable and ought to be referred to arbitration in terms of Clause No. 25 of the first partnership deed dated 15.01.2018. It is pertinent to note that the arbitration clauses in the subsequent deeds dated 22.08.2023 and 26.08.2023 are contained in Clause No. 26 of those respective documents. However, the petitioner has chosen to rely solely on Clause No. 25 of the first deed to invoke arbitration. This reliance, in effect, amounts to an implicit acknowledgment by the petitioner that the first partnership deed dated 15.01.2018 continues to govern the affairs of the 1st defendant firm. Such an admission is significant, as it aligns with the plaintiff's contention regarding the validity of the first deed and further reinforces the necessity of judicial scrutiny into the authenticity and legal effect of the subsequent deeds.

10. Coming back to the arbitrability of the issues involved, the learned counsel for the petitioner contended that when a valid arbitration agreement is in existence, the only duty casted upon the court is to refer the parties to arbitration. Reliance was place on the petitioner in the decision rendered by the Hon'ble Supreme Court of India in **Sushma Shivkumar Daga V Madhurkumar Ramkrishnaji Bajaj (2023 KLT Online 2131 (SC))** wherein it was held that *“The role of a 'Court' is now in any case, extremely limited in arbitration matters. The underlying principles of arbitration as contained in the Arbitration and Conciliation Act, 1996, was always to have as little interference as possible by a judicial authority. The basic purpose for bringing an amendment in S.8 (as well as S.11 of the Arbitration Act) was to minimise the scope of judicial authority in matters of arbitration, except on the ground where prima facie, no valid arbitration agreement exists”*. In the present case, there is no dispute regarding the existence of an arbitration clause between the parties, albeit not all of them. The pivotal question that arises for consideration is whether such an

arbitration clause can be invoked to resolve the disputes projected in the suit. Upon careful examination, this Court is of the considered view that the answer must be in the negative, for the following reasons. The dispute between the parties centers on the determination of which partnership deed governs the affairs of the 1st defendant firm. It is the plaintiff's case that the first partnership deed dated 15.01.2018 is the only valid and binding agreement, while the subsequent deeds dated 22.08.2023 and 26.08.2023 are alleged to be forged and void ab initio. It is pertinent to note that the arbitration clause relied upon by the petitioner is embedded within the first partnership deed itself. Consequently, the authority of the arbitrator or arbitral tribunal emanates solely from the said deed. In such circumstances, the jurisdiction of the arbitrator is confined strictly to the scope defined within the four corners of the partnership deed. An arbitrator is empowered to adjudicate only those disputes that fall within the ambit of the enabling clause. Any dispute that transcends the scope of the arbitration clause is beyond the jurisdiction of the arbitrator. It is a well-settled principle that a person or tribunal deriving authority from a document cannot be called upon to adjudicate the validity of that very document. Such an exercise would exceed the authority conferred upon the arbitrator and render the process inherently flawed. In the present case, the reliefs sought in the plaint pertain to a declaration that the subsequent partnership deeds are void ab initio and that the first deed alone governs the firm. If the arbitrator, upon inquiry, were to conclude that the partnership deed itself is invalid, such a finding would effectively nullify the very source of the arbitrator's authority. This would place both the parties and the arbitrator in a paradoxical situation, wherein the reference to arbitration and any decision rendered thereunder would stand vitiated. The process would thus be rendered futile and devoid of legal efficacy. Accordingly, in a dispute where the validity of the partnership deed containing the arbitration clause is itself under

challenge, it would not be appropriate for this Court to refer the matter to arbitration. The arbitrator does not possess the jurisdiction to adjudicate upon the validity of the instrument from which his authority is derived. As already observed, the jurisdiction of the arbitrator under Clause No.25 of the partnership deed is confined to five specific categories of disputes. While it is true that the interpretation and applicability of the partnership deed may be considered by the arbitrator, such consideration is limited to disputes arising in the course of the partnership business. As rightly contended by the learned counsel for the 1st respondent, the arbitrator is a creature of the partnership deed. When the deed itself is under challenge, the question of its validity cannot be resolved through arbitration.

11. Likewise the 4th category also will not be applicable to the case on hand because it pertains to the business and affairs of the partnership. The learned counsel for the petitioner would contend that the arbitrator can decide his own jurisdiction. To buttress his contention the learned counsel relied on the decision of the Hon'ble Supreme Court of India in Uttarakhand **Purv Sainik Kalyan Nigam Ltd V. Northern Coal Fields Ltd. (2020 (2) SCC 455)** wherein it was held that *“In view of the legislative mandate contained in S.11(6A), the Court is now required only to examine the existence of the arbitration agreement. All other preliminary or threshold issues are left to be decided by the arbitrator under S.16”*. However, the dictum cited by the petitioner does not find application in the present case. The issue at hand is not merely the jurisdiction of the arbitrator, but rather the arbitrability of the subject matter itself and the inherent incompetence of the arbitrator to adjudicate upon such a foundational dispute. The dispute in the present case arises from the existence of multiple partnership deeds, and the confusion surrounding which of these deeds is valid

and binding upon the 1st defendant firm and its partners. This ambiguity strikes at the very root of the arbitration clause, which is embedded within one of the contested deeds. The arbitrator's authority is contingent upon the validity of the deed that contains the arbitration clause. Therefore, unless and until the binding nature of the partnership deed is conclusively determined, the arbitrator cannot be called upon to exercise jurisdiction over the matter. It is imperative that the Civil Court first adjudicate the question of which partnership deed governs the relationship between the parties. Only upon such determination can the Court assess whether the subsequent disputes fall within the scope of the arbitration clause and are capable of being referred to arbitration. The present suit squarely concerns the validity of three partnership deeds and seeks a declaration as to which among them is binding. This is a matter that lies exclusively within the domain of the Civil Court. The arbitrator, being a creature of the partnership deed, cannot be vested with the authority to determine the validity of the very instrument from which his powers emanate. Accordingly, this Court is of the considered view that the arbitration clause contained in the partnership deed cannot be invoked in respect of the disputes involved in this case. The matter is not arbitrable at this stage, and the reliefs sought must be adjudicated by this Court in exercise of its original jurisdiction.

12. Presence of non-signatories to the arbitration clause in the suit

The next aspect to be considered is whether the presence of non-signatory parties to the arbitration clause in the suit renders the dispute non-arbitrable. It is an admitted fact that defendants No. 8 and 9 in the suit are not parties to the partnership deed which contains the arbitration clause. Therefore, the learned counsel for the 1st respondent/plaintiff contends that, as the dispute involves non-signatories to the arbitration clause, they cannot be compelled to go for arbitration because the same is not binding on them. It is also contended by

the learned counsel for the 1st respondent that the disputes cannot be bifurcated so as to retain a part of the same before the Court and refer the other part to the arbitration tribunal or arbitrator. To counter the contention of the existence of non-signatory parties in the suit, the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court of India in **Cox and Kings Ltd V SAP India Pvt.Ltd (2023 SCC Online SC 1634)** wherein it was held that "*Parties under Sec.2(1)(h) read with Sec.7 of the Arbitration Act includes both the signatory as well as non-signatory parties. At the referral stage, the referral court should leave it for the arbitral tribunal to decide whether the non-signatory is bound by the arbitration agreement.*" By relying on the above decision the learned counsel for the petitioner would contend that the presence of non-signatories in the suit by itself is not a bar to sent the dispute to arbitration.

13. Having heard both sides and upon perusal of the decision rendered by the Hon'ble Supreme Court of India, this Court is of the considered view that the said decision does not apply to the facts and circumstances of the present case. In **Cox and Kings case (supra)**, the Hon'ble Supreme Court examined two principal aspects. The first pertains to the interpretation of the expression "*claiming through or under*" a signatory party to an arbitration agreement. The Hon'ble Supreme Court held that a person claiming *through or under* a signatory possesses rights that are subordinate or derivative in nature, as opposed to independent or original rights. Such a person merely steps into the shoes of the signatory and cannot be treated as a party to the arbitration agreement in their own right. The Court further clarified that the phrase "*claiming through or under*" applies strictly to entities acting in a derivative capacity. It does not extend to the joinder of parties who assert independent rights or obligations

outside the scope of the arbitration agreement. Therefore, for a non-signatory to be referred to arbitration based on an arbitration clause that they have not signed, it must be established that the said person is asserting a claim *through or under* a signatory to the agreement. In the present case, defendants No. 8 and 9 are admittedly not signatories to the partnership deed containing the arbitration clause. More importantly, it is not the case of the petitioner that defendants No. 8 and 9 are claiming any rights *through or under* any of the signatories to the arbitration agreement. Their involvement in the suit is based on independent allegations and reliefs sought against them in their own capacity. Accordingly, this Court finds that the principle laid down in ***Cox and Kings case (supra)*** does not aid the petitioner. The presence of non-signatory parties who are not claiming under any signatory renders the dispute non-arbitrable in its entirety.

14. The next aspect considered by the Hon'ble Supreme Court in ***Cox and Kings Ltd. v. SAP India Pvt. Ltd. (supra)*** pertains to the intention of non-signatory parties to be bound by an arbitration agreement. This issue was examined in light of the Group of Companies Doctrine, which permits a non-signatory company within a corporate group to be bound by an arbitration agreement signed by another company in the same group, provided there is a clear intention to be bound. Upon careful consideration, this Court finds that the said doctrine is inapplicable to the factual matrix of the present case. Defendants No. 8 and 9, who are sought to be bound by the arbitration clause, are merely salaried employees of the 1st defendant partnership firm. They do not hold any ownership interest, nor do they exercise control over the administration or conduct of the firm's business. Their role is limited to that of employees, and they are not signatories to the partnership deed which contains the arbitration clause. It is well settled that the status of a partner in a partnership firm is

fundamentally distinct from that of an employee. A partner is bound by the terms of the partnership deed, including any arbitration clause contained therein. An employee, however, is not a party to such contractual arrangements and cannot be presumed to have knowledge of, or intention to be bound by, the arbitration clause. While the Group of Companies Doctrine may be invoked to bind a non-signatory company within a corporate group to an arbitration agreement, such application is confined to entities that are part of a structured corporate relationship and have participated in the negotiation or performance of the contract. The doctrine does not extend to individuals, particularly those who are employees and have no role in the formation or execution of the partnership deed. In the present case, there is no material on record to suggest that defendants No. 8 and 9 had any intention to be bound by the arbitration clause. The petitioner has failed to establish any conduct or circumstance that would warrant the invocation of the doctrine to bind these individuals. It is unreasonable to presume that salaried employees, who act solely in their professional capacity, would be aware of or consent to the arbitration agreement entered into by the partners of the firm. Accordingly, this Court is of the considered view that the Group of Companies Doctrine cannot be imported into the present context to bind defendants No. 8 and 9 to the arbitration clause. Their status as non-signatories and their lack of intention to be bound by the arbitration agreement constitute a bar to referring the disputes to arbitration.

15. Allegation of fraud

The final aspect to be considered is the allegation of fraud made in the plaint. The learned counsel for the 1st respondent contends that specific allegations of fraud have been made in the suit against the petitioner/2nd defendant and defendants No. 8 and 9. According to the 1st respondent, arbitration is not possible when fraud is alleged. On perusal of the plaint

averments, it can be seen that specific allegations have been made against the 2nd defendant to the effect that he is committing fraud in the 1st defendant partnership firm and is siphoning funds from there in order to invest them in a new, similar business which was started by defendants No. 8 and 9. To counter this argument, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court of India in **A.Ayyasamy V A.Paramasivam (2016 AIR(SC) 4675)** wherein it was held that “*Mere allegation of fraud simplicitor may not be a ground to nullify the effect of arbitration agreement between the parties. It is only where there is a serious issue of fraud involving criminal wrong doing, that the exception to arbitrability is carved out.*” By relying on the decision, the petitioner would contend that when the allegation of fraud touching upon the internal affairs of the party interse and it has no implication in the public domain, the arbitration clause need not be avoided and the parties can be relegated to arbitration.

16. Having heard both sides on this aspect and upon a careful perusal of the plaint allegations, it can be seen that the allegations levelled against the 2nd defendant are grave and substantial in nature. In fact, the genesis of the present suit itself stems from such allegations, which form the core of the dispute between the parties. It is alleged that the 2nd defendant has committed acts of fraud in the administration of the 1st defendant partnership firm, including the siphoning of funds for investment in a competing business venture allegedly initiated by defendants No. 8 and 9. These allegations are not merely incidental but go to the root of the dispute and raise serious questions regarding the integrity of the firm's operations. It is particularly noteworthy that the plaintiff, who is a partner in the firm, has expressly denied signing the two subsequent partnership deeds dated 22.08.2023 and 26.08.2023, which were produced

before the Hon'ble High Court in O.P.(C) No. 777/2024. This denial casts a shadow over the authenticity of the said documents and raises a presumption that irregularities may have occurred in the conduct of the firm's affairs. Further, the substantial increase in the remuneration of the 2nd defendant under the aforementioned deeds, when compared to the original partnership deed dated 15.01.2018, lends credence to the allegation that the 2nd defendant may be exercising unauthorized control over the firm. While disputes and allegations of misconduct among partners may ordinarily be subject to arbitration, the specific allegation of forgery of foundational documents such as partnership deeds transcends the scope of arbitrable matters. A partnership deed is not a mere administrative instrument. It is the foundational document that defines the structure, powers, rights, duties, and obligations of the partners. It delineates what a partner may or may not do in the course of the firm's business. Any act that purports to alter or fabricate such a document strikes at the very heart of the partnership and cannot be treated as a routine dispute amenable to arbitration. In view of the above, this Court is of the considered opinion that the allegations of forgery and fraud in relation to the partnership deeds are serious and foundational in nature. Likewise, the partnership deed is not only a governing instrument among the partners but also serves as a guiding framework for the firm's dealings with third parties. Unlike a company, a partnership firm does not possess a separate legal personality. The firm is, in essence, the collective identity of its partners. Consequently, the partners are personally and jointly liable for all debts and obligations incurred by the firm. Each partner bears responsibility for the firm's actions, and any ambiguity regarding the constitution of the firm directly impacts its legal and financial standing. In the present case, the existence of three partnership deeds dated 15.01.2018, 22.08.2023, and 26.08.2023, has given rise to a serious dispute concerning which deed governs

the affairs of the 1st defendant firm. This uncertainty is not confined to the internal dynamics among the partners. It has far-reaching implications for third parties who engage in business transactions with the firm. Should it be subsequently determined that the partnership deeds dated 22.08.2023 and 26.08.2023 are null and void, the legal and operational structure of the firm would undergo a drastic transformation. Such a finding would not only alter the composition of the partnership but also affect the validity of transactions entered into under the authority of the disputed deeds. Financial institutions, including public sector banks, that have extended credit facilities to the firm would face considerable difficulty in enforcing repayment obligations. Given that liability in a partnership is both personal and joint, any confusion regarding the identity of the partners would impede recovery efforts and create legal uncertainty. As already noted, the plaintiff has alleged that the two subsequent partnership deeds were forged with the intent to unlawfully restructure the firm and exclude her from its affairs. These allegations of fraud elevate the dispute beyond a mere disagreement among partners. The uncertainty surrounding the governing partnership deed has broader ramifications that extend to third parties, including creditors, suppliers, and financial institutions.

17. Apart from that another important aspect that is to be considered is the relevance of the document produced from the side of the 1st respondent. It is the true extract of the firm No.699/2019 issued from the office of The Registrar of Firms, Thiruvananthapuram. The plaintiff has specifically alleged that the 2nd defendant, who is the Managing Partner of the 1st defendant firm, has been siphoning funds from the said firm and diverting them into a newly established entity named 'Charankat Ceramics and Granites', in which defendants 8 and 9 are stated to be partners. The document in question reveals that the 2nd defendant is indeed listed as a partner in 'Charankat Ceramics and Granites'. This fact, on

the face of it, lends prima facie credibility to the plaintiff's allegation and warrants further judicial scrutiny. Such allegations, which touch upon potential financial misconduct and diversion of funds, cannot be lightly brushed aside. They raise serious questions regarding breach of fiduciary duty, misappropriation of partnership assets, and fraudulent conduct. These matters require a thorough and impartial investigation, which falls squarely within the domain of a civil court. It is pertinent to note that an arbitrator or arbitral tribunal is inherently limited in jurisdiction and scope. The entity 'Charankat Ceramics and Granites' is not a party to the arbitration agreement, nor is it within the purview of the arbitral proceedings. Therefore, the arbitrator is not empowered to conduct a roving enquiry into the affairs of this third-party entity or to examine the veracity of the financial transactions alleged by the plaintiff. In view of the above, this Court is of the considered opinion that the nature of the dispute, particularly the allegations of fraud and financial impropriety involving third-party entities, renders the matter non-arbitrable. Consequently, point No.1 is found against the petitioners.

18. Point No.2 –

In view of the discussion in point No.1, it is found that the petition is meritless. Hence it is liable to be dismissed.

In the result, the I.A. is dismissed.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 11th day of August, 2025.)

Sd/-
MAHESH M.
ADDITIONAL MUNSIFF

APPENDIX :-

Documents produced from the side of petitioner

1. Certified copy of final order in OS.372/2023 of Munsiff Court, Cherthala.

Documents produced from the side of respondents

1. Copy of partnership deed of 1st defendant firm dated 15.01.2018.
2. Copy of fabricated deed dated 22.08.2023.
3. Copy of expulsion memo dated 25.08.2023.
4. Copy of fabricated deed dated 26.08.2023..
5. Copy of notice sent to the 2nd defendant by the plaintiff dated 09.02.2023.
6. True extract of firm No.699/2019 issued from the office of the Registrar of firms, TVM.

Sd/-
ADDITIONAL MUNSIFF