

Order No – 09
Dated : 23-09-2025

Today is fixed for passing order in respect of the petition dated 28.08.2025 filed by the OP.

In the petition dated 28.08.2025 under order 7 Rule 11 (d) of CP Code, which was numbered as IA 02 of 2025, it was contended by Opposite Parties that the present case for appointment of receiver u/S 9 of the Arbitration and Conciliation Act, 1996 is not maintainable as the same was filed by an unregistered partnership firm. It was also contended that since the dispute relates to business of the partnership firm, the same is barred u/S 69 (1) and (2) of Indian Partnership Act 1932, and therefore, the plaint should be rejected as per order 7 Rule 11 (d) of C. P. Code.

In the written objection against the said petition, it was claimed by the petitioner that the petition under order 7 Rule 11 (d) of C. P. Code has been filed only to stall the proceeding and the petition itself is not maintainable since order 7 Rule 11 (d) of C. P. Code relates to rejection of plaint whereas an application u/S 9 of the Arbitration and Conciliation Act is neither a plaint nor the present case can be treated as a suit. It was also contended that the bar created u/S 69 of the Indian Partnership Act, 1932 is not applicable in a proceeding which was instituted in respect of the accounts of the partnership firm.

At the time of hearing of the petition, Ld. Advocate for Opposite Parties submitted that parties of the present Arbitration case are partners of an unregistered partnership firms and therefore, present Arbitration case is not maintainable. He further submits that registration means 'registration of the firm' and not 'registration of the deed of partnership firm'. It was also submitted that the terms 'suit' includes 'proceeding' and therefore, order 7 Rule 11 (d) of C. P. Code is perfectly applicable to the present case. It was further submitted that objection u/S 69 of Partnership Act can be raised at any stage and even if the defendant do not raise objection, court cannot ignore the same. In support of his contention he relied upon

SLP (C) No-30442/2019, AIR 1996 Mad 433 and AIR 1964 SC 1882.

Ld. Advocate for the petitioner, on the other hand, submitted that Arbitration and Conciliation Act is a complete code by itself and therefore, provisions of C. P. Code has no applicability in arbitration proceeding. It was further submitted that Hon'ble Calcutta High Court as well as Supreme Court in several reported decisions held that proceeding u/S 9 of the Arbitration and Conciliation Act is not in the nature of a suit and therefore, provisions of C. P. C is not applicable. In support of his contention, he relied on 2002 (2) MLJ 146, AIR 2022 Cal 382 and (2016) 11 SCC 313.

Considered the submission of both sides there is no denial that Order 7 Rule 11 of C. P. Code is applicable only in respect of a suit. Sec. 141 of C.P.Code prescribes that procedure prescribed in the Code in respect to suits shall be applicable mutatis mutandis in all proceedings before any Civil Court. Now it has to be considered whether in arbitration proceeding C.P.Code is applicable or not?

Section 19 of the Arbitration and Conciliation Act 1996 specifically excludes provisions of C. P. Code in post arbitral proceeding. So far as pre-arbitral proceeding is concerned, in the case of **Ganesh Benzoplast Ltd. Vs. Sundaram Finance Ltd., 2002 (2) MLJ 146** Madras High Court considered the applicability of provision of order 38 Rule 5 C. P. C in a proceeding u/S 9 (ii)(b)(e) of Section 9 of Arbitration Act 1996 and it was observed by the Hon'ble Court that in view of the fact that Section 41 of Arbitration Act 1940, which contemplated applicability of the provisions of C. P. C in arbitration proceeding, has been deleted in the Arbitration and Conciliation Act 1996 it was not necessary to follow the requisite averment of order 38 Rule 5 C. P. C.

In the case of **Md. Washim Vs. M/S Bengal Refrigeration, AIR 2022 Cal 382**, it was observed by the Hon'ble Court that in view of the decision of the Apex Court in Umesh Goel Vs. Himachal Pradesh CGHS Ltd., (2016) 11 SCC 313 arbitral proceeding will not come under the expression 'other proceedings' of Section 69 (3) of Partnership Act.

On perusal of the case laws file on behalf of the OP it can be seen that **Sunkari Tirumala Rao Vs. Panki Aruna Kumari SLP (C) No-30442/2019** relates to a civil suit and not relating to arbitration proceedings. In that case plaintiffs filed the Suit No-OS80/2012 for recovery of money as partners of an unregistered firm. Factually said judgement is completely different from the present case. The other case law reported in AIR 1996 Mad 433 is also not applicable as that was also relation to a regular civil suit. Ld. Advocate for the OP, by relying upon **Jagdish Chander Gupta Vs. Kajaria Traders (India Ltd), AIR 1964 SC 1882** tried to impress upon the Court that the arbitration proceeding will come within the ambit of 'other proceeding' appearing in clause (3) of Section 69 of Partnership Act. In the said case, while considering applicability of 'other proceedings' appearing in clause (3) of Section 69 of Partnership Act it was observed by the Apex Court that the words 'other proceedings' must receive their full meaning untrammelled by the words 'a claim of set off'. It was further held that the sub-section provides for the application of the provisions of sub-section (1) and (2) to claims of set-off and also to other proceedings of any kind which can properly be said to be for enforcement of any right arising from contract. However, said case was decided in the context of the Arbitration Act, 1940 and not in the context of the present Act. Jagdish Chander Gupta's case was discussed and distinguished in the case of **Umesh Goel Vs. Himachal Pradesh CGHS Ltd., (2016) 11 SCC 313** wherein Apex Court made the following observation.

"But on a deeper scrutiny of the judgement, we find that the light of the special features involved in the said case, it was laid down that "other proceedings" would be referable to arbitration as well..... The ratio laid down in Jagdish Chander case does not in any way conflict with the view which we have taken hearing, having regard to the advent of the 1996 act, under which the nature of arbitration proceedings underwent a sea change as compared to the 1940 Act, what is stated in Jagdish Chander case can have application in the special facts of that case and that it can have no

application to a proceeding which emanated under the 1996 Act.”
(emphasis supplied)

Therefore, it is clear that the observation of the Apex Court made in Jagdish Chander Gupta has no applicability in the present case. In the case of Umesh Goel, it was further observed,

“As far as the construction of the said sub-section (3) of Section 69 is concerned, we are able to discern the above legal position without any scope of ambiguity. To be more precise, the condition precedent for the operation of ban under sub-section (3) is that the launching of a suit in a court of law should be present and it should be by an unregistered firm or by a person claiming to be partner of an unregistered firm either to a claim for set-off in the said suit or any other proceedings intrinsically connection with the said suit.

In the event of the above ingredients set out under sub-section (1), (2) and (3) being fulfilled then and then alone the ban prescribed against an unregistered firm under Section 69 (1), (2) and (3) would operate and not otherwise.”

What section 69 of the Partnership Act bars is ‘a right arising from a contract or conferred under the Partnership Act’. Now it has to be seen whether a proceeding under section 9 of the Arbitration and Conciliation Act, 1996 can be considered as a right arising from a contract?

In the case of **Firm Ashok Trader Vs. Gurumukh Das Saluja, (2004) 3 SCC 155**, the question formulated by the Apex Court was that, ‘an application u/S 9 under the scheme of Arbitration and Conciliation Act result in initiation of civil proceedings but can it be said that a party filing an application u/S 9 of the Act is enforcing a right arising from a contract?’ Hon’ble Court answered the question in the following manner, ‘in short, 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 power to grant before, during or after arbitral proceedings by virtue of Section 9 of the A & C Act. The relief sought for in an application under Section 9 of the A & C 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 enforced in the Arbitral Tribunal; the court under Section 9 is only formulating interim measures so as to protect the right under adjudication before the Arbitral Tribunal from being frustrated. Section 69 of the Partnership Act has no bearing on the right of a party to an arbitration clause to file an application under Section 9 of the A & C Act. (emphasis supplied)

In the present case petitioner filed an application u/S 9 of the Arbitration and Conciliation Act 1996 praying for interim relief, which, as per the law laid down by the Apex Court in Umesh Goel Vs. Himachal Pradesh CGHS Ltd., is not in the nature of a suit and therefore, provisions of C. P. C are not applicable to the present proceedings. Moreover, while making a prayer praying for interim relief petitioner is not seeking enforcement of any right arising out of contract between the parties or conferred under the Partnership Act but only praying for interim relief to protect and preserve his right before commencement of arbitral proceedings and it is not affected by Section 69 of the Partnership Act as held by the Apex Court in Firm Ashok Trader Vs. Gurumukh Das Saluja.

Therefore, in the ultimate analysis, in my opinion the petition under order 7 Rule 11 C. P. Code is devoid of any merit and the same stands rejected.

To 14.11.2025 for further order.

D/C by me.

**Judge, Commercial Court
At Asansol (in-charge)**

**Judge, Commercial Court
At Asansol (in-charge)**