



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 522 OF 2025

Thorat Wine Mart and Ors.

... Petitioners.

Versus

Surekha Ravindra Thorat and Ors.

... Respondents.

Mr Drupad Patil a/w. Mr Rahul Soman and Mr Prasad Keluskar for Petitioner Nos.2 and 3.

Mr Firoz Bharucha i/by Mr Suraj Kaushik for Respondent Nos.1 to 4 .

Mr Kanetkar for Respondent No.5.

Coram : Sharmila U. Deshmukh, J.

Reserved On : March 12, 2026

Pronounced On : April 01, 2026

ORDER :

1. By this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, "**Arbitration Act**"), the Petitioners-Original Respondent Nos.1 to 3 challenge the Award dated 1st October, 2024 passed by the Learned Sole Arbitrator. For sake of brevity, the parties are referred to by their status in arbitration proceedings.

2. The dispute between the parties was referred to arbitration invoking the arbitration agreement contained in the partnership deed dated 1st July, 1987 entered into between two brothers Ravindra Laxman Thorat (Ravindra) and Nakul Laxman Thorat (Nakul). The

Claimants are the legal heirs of Ravindra and the Respondent Nos. 1 to 3 are legal heirs of Nakul. The business of sale of foreign made Indian liquor was carried out initially by Nakul in partnership with their aunt- Rukhminibai Thorat under partnership deed dated 26th July, 1973. On 6th May, 1987, Rukhminibai Thorat retired from the partnership business and Ravindra Laxman Thorat was admitted to the partnership business by executing partnership deed dated 1st July, 1987. There were addendums to the deed of partnership dated 13th March, 1993 and 1st April, 1993. As per the partnership deeds, the profits and losses of the partnership were to be shared between Nakul and Ravindra in the ratio of 60% : 40%.

3. Ravindra expired on 11th January, 2001 and it is the Claimant's case that thereafter Nakul was carrying on the business utilising the partnership assets without final settlement of accounts. It was claimed that in the year 2020, Nakul obtained Claimant No.1's signature on document purportedly for renewal of liquor license. Nakul expired on 15th September, 2009 and after his death business was being carried out by his wife Malti and their sons. Malti expired on 24th May, 2020 and business was continued by the sons of Nakul. In the year 2020, the Claimants sent legal notice seeking winding up of the partnership firm, settlement of accounts of the partnership, 40% share in the profit along with interest and 40% share in the

partnership property.

4. The disputes were referred to arbitration and by the impugned Award, the Learned Sole Arbitrator has directed winding up of affairs of the partnership firm, settlement of accounts and payment of 40% share in profit from the time the deceased partner ceased to be a partner in the partnership firm along with interest 12% p.a. on the unpaid amount and to pay 40% share in the partnership property being shop premises bearing Shop No.2, Integrated Bhoomi, LBS Marg, Ghatkopar (West) Mumbai-400086.

5. Mr. Patil, learned counsel appearing for the Petitioners-Original Respondent Nos.1 to 3 would submit that in the statement of defence, it was specifically pleaded that sum of Rs.32,000/- was paid during Ravindra's lifetime and after his death in the year 2001, the balance sheet was prepared in which the sum due in the capital account of Ravindra was Rs.11,365/-. He submits that the Claimant No.1 signed the balance sheet and acknowledged the sum due in Ravindra's capital account. He submits that the Learned Arbitrator has ignored this vital evidence resulting in perversity.

6. He submits that the liquor license was thereafter transferred to the Respondent Nos.2 and 3 who carried out the business as the legal heirs of Nakul. He would submit that the impugned Award holds that the liquor license and the shop are the partnership assets, by relying

on single rent receipt in respect of shop which later went into redevelopment. Drawing attention to Section 37 of the Indian Partnership Act, 1932 (for short, "**Partnership Act**"), he submits that Section 37 speaks of share in profits and makes no reference to the profit sharing ratio in partnership deed. He would submit that Section 37 applies in absence of contrary, whereas in present case Clause 10 constitutes a contractual agreement under which the partnership property belonged to surviving partner. He submits that as the legal heirs were paid the value of Ravindra's investments and profits as reflected in the capital account of Rs.11,365/- as per the contract between the parties, the share of the deceased in the partnership property belonged to the Respondents.

7. He would submit that Ravindra expired in the year 2001 and the claim was made in the year 2020 which was clearly barred by limitation. He submits that the learned Sole Arbitrator has referred to Section 88 and 95 of the Indian Trusts Act, 1882 (for short, "**Trusts Act**") read with Section 10 of the Limitation Act, 1963 (for short, "**Limitation Act**") to hold that the claim is not barred by limitation without noticing that the property was not held as trustee and therefore the provisions have no application. He submits that it was the specific case before the learned Arbitrator that there was acceptance of final amount and therefore claim is barred by limitation.

8. *Per contra*, Mr. Bharucha, learned counsel appearing for the Respondent Nos.1 to 4-Original Claimants would submit that specific issue was framed whether the accounts in respect of the partnership firm was settled between the Claimants and the Respondents which was answered in the negative after taking into consideration the evidence on record which showed that the accounts were not settled. He submits that in the absence of final settlement of accounts, Section 37 entitles the Claimants to a share in the subsequent profits of the firm made by utilising the assets of partnership. He submits that there is no evidence produced to show that the Respondents had made payment of the value of Ravindra's investments to the Claimants and therefore Clause 10 of partnership deed does not assist the Petitioners. He submits that the findings of Learned Arbitrator that the shop premises constitute asset of the partnership asset is based on evidence and it is not the case of the Respondents that Ravindra had no share in the immovable property. Drawing support from the decision in the case of ***Hasina Mohamad Shafik Lalji and Ors. vs. Fatima Correa Nee Fatima Yakub Ali***, he submits that in identical facts, this Court has applied the provisions of Section 88 and 95 of Trusts Acts read with Section 10 of Limitation Act, to hold that the claim was not time barred. He submits that there is no perversity demonstrated and hence, no interference under Section 34 is warranted.

9. Rival contentions now fall for determination:
10. The Claimants case is premised on the ground that there was no final settlement of accounts, which gives rise to entitlement of the Claimants to a share in subsequent profits of the partnership firm. The right to a share in subsequent profits of the firm upon the death of a partner emanates from Section 37 of the Partnership Act and reads as under:

“37. Right of outgoing partner in certain cases to share subsequent profits.—Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm:

Provided that whereby contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.”

11. Section 37 governs a situation where there is no final settlement of account and in absence of contractual agreement to the

contrary the legal heirs of deceased partner are entitled to share in profits made as may be attributable to use of the deceased's share in property of the firm. The proviso to Section 37 carves out an exception to the substantive provision by providing that where the contractual arrangement gives right to the surviving partner to purchase interest of the deceased, which option is duly exercised, there cannot be any claim to further share in profits. It provides that failure to exercise the option in all material respect renders the surviving partner liable to accounts under the foregoing provision of Section 37.

12. The statutory provision of Section 37 thus yields to a contractual agreement and satisfaction of the contractual agreement in all material respects is *sine qua non* to negate the claim to future profits of the firm in case of deceased partner. In the present case, Clause 10 of the partnership deed provides as under:

“10. If during the continuance of the partnership, any partner shall die or become insolvent or retire, then the value of his investment and profit in the partnership shall be paid to him or his heir, executors or trustees and the share of the deceased or outgoing partner shall as from his death or ceasing to be a partner, belong to the remaining partner or partners and the business shall be continued with the remaining partner as the Sole Partner/Proprietor at the Partnership Premise.”

13. The proviso to Section 37 demands compliance in all material respects with the contractual terms and the Respondents in order to deny the claim was mandated to show that the value of Ravindra's investment and profit in partnership was paid to the estate of Ravindra. It is upon satisfaction of this term which would entitle (a) the surviving partner to continue with the business as proprietor at the partnership premise and (b) negate the claim for future profits by rendering compliance with the proviso to Section 37.

14. The Learned Arbitrator has considered the evidence on behalf of Claimants and the admissions of Respondent No.2. The Respondent No 2 has admitted that there is no document on record to prove that the payments have been made in pursuance of Clause 10 to the legal heirs of Ravindra. The non compliance of the contractual agreement contained in Clause 10 of partnership deed in purchasing the interest of the deceased partner would result in applying the substantive provision of Section 37, which has been rightly applied by the Learned Arbitrator.

15. Mr. Patil's reliance on the signature of Claimant No.1 appearing on the balance sheet of the year 2001 at the highest would establish acknowledgment of Ravindra's capital account of Rs.11,365/- . What is required to be proved is the payment of amount due on account of

capital to the estate of deceased in accordance with Section 48 of the Partnership Act. The evidence on record is to the contrary and there is clear admission by Respondent No.2 of non-payment. Resultantly, the share of the deceased did not vest in the surviving partners and utilisation of the deceased's share in running the partnership business gave right to Claimants to seek share in profits of the firm. The sum of Rs.32,000/- paid during the lifetime of Ravindra is immaterial as Section 37 mandates settlement of account after death of Ravindra. The finding of Learned Arbitrator on Issue No.6 that the accounts were not settled between the claimants and Respondent Nos.2 and 3 is based on appreciation of evidence and is not shown to suffer from perversity.

16. The Learned Arbitrator has awarded 40% share in profit which is sought to be assailed on the ground that Section 37 does not speak of share in the ratio as agreed in the partnership deed. The business of the firm is sale of liquor using the liquor license and operated from partnership premises of the firm. There is no submission canvassed that the liquor license was not the property of the partnership firm. The learned Arbitrator has taken into consideration the rent receipt of the old shop Exhibit C-8 which stood in the name of the partnership firm, that the rent was paid from the income of the firm and held that the tenancy of the old shop stood in the name of the firm and that

new redeveloped shop is in the lieu of the said old shop. Mr. Bharucha has rightly pointed out the partnership deed which provides for the business to be carried out from the old shop. Clause 10 of the partnership deed also speaks of partnership premise referable to the old tenanted shop. The learned Arbitrator has therefore rightly held that the Respondents have not brought any evidence to show any exclusive claim in respect of the tenancy and subsequent entitlement to the premises in lieu of the tenancy. The business was therefore being carried out by utilising the partnership assets including the share of deceased in the assets of the firm.

17. Section 37 uses the expression "*such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm*". It is admitted by the Respondent No 2 that the principle source of income is the income from the partnership business. The Learned Arbitrator has relied upon the decision of Hon'ble Apex Court in ***V. Subramaniam vs Rajesh Raghuendra Rao***¹ in which the Hon'ble Apex Court has held that partners of a firm are co-owners of properties of the firm unlike a company. Accepting the legal position, Ravindra and Nakul would be co-owners of properties of the firm i.e. the liquor licenses and shop premises. The business of sale of liquor is essentially from utilising

1 (2009) 5 SCC 608

these two assets of the partnership firm. There is no evidence adduced by the Respondents to demonstrate that the profits of the firm subsequent to the death of Ravindra was not attributable to use of Ravindra's share of the property. As per the partnership deed, by utilising the same assets, the parties had agreed to share of profits in the ratio of 60% : 40% which has been granted by the Learned Arbitrator. In absence of any evidence by Respondents to demonstrate that despite use of the same assets, there were other factors which militates against the award of the profits of the firm on account of utilising of share of deceased in the same proportion, the award of profits in same ratio as agreed in the partnership deed cannot be said to suffer from perversity.

18. On the aspect of limitation, the Learned Arbitrator has considered the provisions of Section 88 and 95 of the Trusts Act and Section 10 of the Limitation Act to hold that the claim of the claimants with regard to the share in the capital and profits of the firm survives unless the same has already been settled. In the case of ***Hasina Mohamad Shafik Lalji and Ors. vs. Fatima Correa Nee Fatima Yakub Ali*** (supra), an identical clause in the partnership deed came up for consideration in the context of Section 34 of the Arbitration Act. In that case, one of the partners had expired in the year 1982 and in the year 2012, the arbitration clause was invoked claiming profits arising

from the use of the deceased partner's share of the capital of the firm. On aspect of limitation, the learned Single Judge considered the provisions of Section 88, Illustration (f) and Section 95 of Trusts Act dealing with the fiduciary obligation and Section 10 of Limitation Act providing for suits against trustees and their representatives not being barred by any length of time.

19. The Learned Arbitrator has applied the law laid by the learned Single Judge to hold that the claim is not barred by limitation. There is no contrary ruling pointed out to this Court to demonstrate that the Award is not in compliance with the judicial precedent.

20. The winding up of the firm is complete only upon dissolution of firm and settlement of account and when a surviving partner carries on the business of partnership with the property of the firm without settlement of accounts, the estate of the deceased partner is entitled to share of the profits or to interest at the rate of 6% on the amount of share. In this case the Learned Arbitrator has granted share in profits of the firm in accordance with law.

21. In light of the above, the impugned Award is not demonstrated to be vitiated on account of patent illegality, perversity or being in contravention with the fundamental policy of Indian Law. Resultantly, there is no warrant for interference under Section 34 of Arbitration Act. Petition stands dismissed.

22. In view of the dismissal of the petition, pending Interim Applications, if any, do not survive for consideration and same stand dismissed.

[Sharmila U. Deshmukh, J.]