



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.02.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.771 of 2026
and CMP.No.4026 of 2026

Shyamdev Mundhra

... Petitioner

vs.

1.Krishna Kumar Mundhra
2.Ashok Kumar Mundhra
3.Uma Rathi
4.Ramdev Mundhra

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the impugned order dated 07.12.2025 passed by the Sole Arbitrator in Application No.1 of 2025 by allowing the application under Section 16 filed by the petitioner and hold that the claims raised are beyond the scope of arbitral jurisdiction.

For Petitioner : Mr.S.Gopinath

ORDER

The Civil Revision Petition is filed challenging the order passed by the Sole Arbitrator, dismissing the application filed by the petitioner under Section 16 of Arbitration and Conciliation Act, objecting to the jurisdiction of the Arbitrator.



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2. The first respondent herein initiated arbitral proceedings, seeking following reliefs.

(a) To declare that the Firm M/s.Phusaram Munthada has dissolved on 01.04.2020 by operation of Law;

(b) To direct the 1st respondent to produce true and fair accounts of the Firm, M/s.Phusaram Munthada from 01.04.2011 till 10.01.2025;

(c) To direct the 1st respondent to wind up the affairs of the Firm M/s.Phusaram Munthada upon its dissolution on 01.04.2020 and distribute the surplus in the Firm in accordance with law;

(d) To direct the 1st respondent to pay the claimant a sum of Rs.84,51,852/- consisting of Rs.39,34,654/- towards his share in the capital of M/s.Phusaram Munthada as on 31.03.2020 together with interest @ 24% per annum from 01.04.2020 till 10.01.2025 amounting to Rs.45,17,198/- along with such further amounts that would be determined based on the production of accounts by the 1st respondent;

(e) To direct the 1st respondent to pay the claimant his entitlement in the profits made by the 1st respondent using the capital M/s.Phusaram Munthada from 01.04.2020 till 10.01.2025;



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(f) Directing the 1st respondent to pay pendent lite interest on the amounts determined in earlier claims from the date of filing the statement of claim until the award;

(g) Directing the respondents to pay future interest @ 24% per annum from the date of award until realization;

(h) Directing the respondents 1 and 2 to pay the costs of the proceeding;

(i) Grant such other suitable reliefs as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

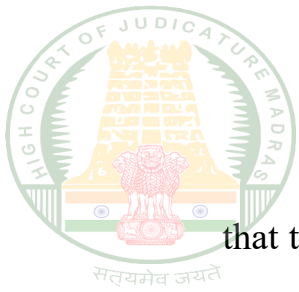
3. The petitioner who was arrayed as the first respondent in the main Arbitration Original Petition filed instant application under Section 16 of Arbitration and Conciliation Act objecting to the jurisdiction of the Arbitrator on the ground that as per Clause 20 of the Partnership deed dated 01.04.2021 only dispute concerning the dissolution of the Partnership Firm or winding up of the same could be referred to Arbitration, but dispute pertaining to disbursement of share capital, profits belonging to the dead partner could not be referred to Arbitration. The application filed by the petitioner was dismissed by the Sole Arbitrator and aggrieved by the said order, the petitioner has come before this Court.



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4. The learned counsel appearing for the petitioner would submit that as per Section 22 of the Partnership agreement, death or retirement of the partner shall not automatically cause dissolution of the Firm and hence in the instant case, on death of one of the partners Mrs.Maina Bai Mundra, there was no dissolution of the Firm by operation of law and the sons of the deceased were inducted in the partnership firm and the Firm will continue. Therefore, according to him, the claim sought for in the Arbitration Original Petition goes beyond the scope of the Arbitration Clause under Section 20 of agreement.

5. A perusal of the impugned order passed by the Arbitrator would indicate that Maina Bai Mundra died on 01.04.2020 and the second respondent retired from partnership on 01.04.2020. Hence, on 01.04.2020, there was only one partner namely, the petitioner and in order to have a valid partnership Firm there must be minimum two partners and whereas on 01.04.2020, there was only one partner alive. Therefore, the learned Arbitrator observed that the Firm got dissolved on 01.04.2020 and the new partnership deed dated 01.04.2020 came into existence only after death of Maina Bai Mundra and retirement of second respondent. It is also observed



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that the genuineness of the deed dated 01.04.2020 cannot be decided at this stage and the same can be proceeded only after evidence is recorded.

6. It is further observed in view of the dissolution of the partnership Firm on 01.04.2020 by operation of law, the declaratory relief sought for in claim (a) is maintainable.

7. Section 16 of Arbitration Act empowers the Arbitral Tribunal to rule on its jurisdiction. Any objection as to the jurisdiction of the arbitral Tribunal shall be decided by arbitrator himself.

8. Section 16 of Arbitration Act reads as follows:

16. Competence of arbitral tribunal to rule on its jurisdiction:

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence;



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however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

9. A close scrutiny of the above Section would make it clear the Arbitral Tribunal has got jurisdiction to decide any objection as to its jurisdiction and in cases where such objection is rejected by the arbitral Tribunal, it can continue with arbitral proceedings and make the arbitral award. Any party aggrieved by such arbitral award may make an application to setting aside such an award in accordance with Section 34 of Arbitration and Conciliation Act [herein after referred to as Act]. Therefore, the correctness of the order rejecting an application under Section 16 of Act objecting to



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the jurisdiction of the Tribunal can be challenged in an application filed under Section 34 of Act. In view of Section 16 (6) of Act, which enables the parties to challenge such an award by way of application under Section 34, this Court is not inclined to exercise its supervisory jurisdiction and interfere in revision. Further Section 34 (2) reads as follows:

- (2)An arbitral award may be set aside by the Court only if-
- (a)the party making the application [establishes on the basis of the record of the arbitral tribunal that]:
- (i) a party was under some incapacity; or
 - (ii)the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
 - (iii)the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iv)the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: (Emphasis supplied by this Court).

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

- (v) the composition of the arbitral tribunal or the arbitral



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procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.[Explanation 1. For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

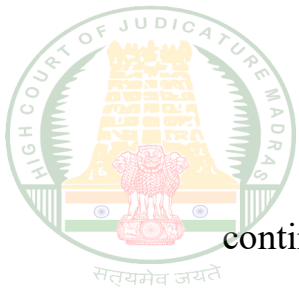
(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Section 34 (2) (iv) would make it clear that the petitioner is entitled to challenge the award on the ground that the award deals with a dispute not contemplated by or not falling within the terms of submission to arbitration.

10. Section 16(5) and (6) of Arbitration and Conciliation Act, would make it clear any objection as to jurisdiction of arbitral tribunal can be decided by arbitrator himself and in case such objection is rejected, he can



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continue the arbitration and pass final award. Such final award is liable to be challenged under Section 34 of the said Act by aggrieved party. Section 34(2) (iv) makes it clear jurisdictional error by arbitral tribunal is specifically made as a ground of attack for challenging the final award. Hence, any decision of arbitral tribunal on objection as to its jurisdiction, even if erroneous, can only be challenged under Section 34(2) (iv) of said Act. Since the petitioner has got remedy under scheme of Arbitration Act, this Court need not exercise its revisional power.

11. In this regard it would be appropriate to refer to the decision of seven member Bench of Apex Court in ***S.B.P. and Co. Vs. Patel Engineering Ltd. and Ors*** reported in ***AIR 2006 SC 450*** =***MANU/SC/1787/2005***. The relevant observation of Apex Court reads as follows:

44. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the



Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.

45. The object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 of the Constitution of India or under Article 226 of the Constitution of India against every order made by the arbitral tribunal. therefore, it is necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage. (Emphasis supplied by this Court)

12. The above view of the Apex Court was followed in ***Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd. and Ors.***, reported in **2020 (1) SCC 706 = Manu/SC/1669/2019**. The relevant observation therein reads as follows:

“16. One other feature of this case is of some importance. As stated herein above, on 09.05.2018, a



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Section 16 application had been dismissed by the learned Arbitrator in which substantially the same contention which found favour with the High Court was taken up. The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised Under Section 34. (Emphasis supplied by this Court)

13. In view of the discussion made earlier, I am not inclined to exercise the jurisdiction under Article 227 of Constitution of India and accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.02.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The Sole Arbitrator,
Hon'ble Mr. Justice K. Mohan Ram (Retd),
Chennai.



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S.SOUNTHAR, J.

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