



2026:HHC:26977

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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arb. Case No.816 of 2024

Date of Decision:- 03.07.2026

Sahib Suri

....Petitioner

Versus

M/s Rajesh Kumar & Co. and Others

....Respondents

Coram

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

Whether approved for reporting?¹

For the Petitioner : Mr. Navneet Kumar Bhalla,
Advocate.

For the Respondents : Mr. H.S. Bhogal, Senior Advocate
with Ms. Srishti Verma, Advocate.

G.S. Sandhawalia, Chief Justice (Oral).

The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') for appointment of an Arbitrator to decide the dispute between the parties in terms of Clause 25 of the Deed of Retirement dated 14.03.2023 **(Annexure P-1)**. The said clause reads as under:-

"25. That all matters of dispute, difference and/or misunderstandings shall be referred to arbitration subject to the provision of Arbitration Law in force from time to time."

¹ Whether reporters of Local Papers may be allowed to see the judgment?



2. It is the case of the petitioner that he was running a partnership business under the name and style of M/s Rajesh Kumar & Company. The partnership firm was carrying out the business of liquor and wine and respondent Nos. 2 to 4 were continuing partners in the said partnership firm upon the reconstitution in terms of the **Annexure P-1** (Retirement Deed).

3. Reference has been made to Clause 3 of the Retirement Deed which provides that the retiring partners as such were given the benefits and could be released all their share, right, title and interest in the business, of the said partnership, its assets including goodwill and all outstanding, benefits of all permits and licenses held by the Firm in consideration of the amount outstanding to his credit in his capital account at the closing hours of 31.03.2023 and the continuing partners were agreed to repay this amount to the retiring partners at earliest from the firm until then the same amount would stand as liability towards the retiring partner in the partnership firm.

4. Since the accounts were not settled as agreed in terms of the **Annexure P-1** (Retirement Deed), a notice under Section 21 of the 'Act' was served upon the respondents on 04.06.2024 (**Annexure P-2**) for the appointment of an arbitrator. The request was declined by the respondents vide reply dated



03.07.2024 (**Annexure P-3**), which led to the filing of the present petition

5. In the reply filed by respondent Nos. 1 to 4, the plea has been taken that respondent Nos. 2 to 4 had not signed the alleged Retirement Deed, and they specifically had denied the signatures attributed to them in **Annexure P-1**, filed with the petition, as being fabricated. It was also alleged that the petitioner had failed to append the original Retirement Deed. The plea has also been taken that the petitioner was only an employee of respondent No.1 and not a partner.

6. In such circumstances, the learned Senior Counsel appearing for the respondents has relied upon the recent judgment of the Apex Court, passed in **SLP (C) No.6013 of 2021**, titled as **Rajia Begum Vs. Barnali Mukherjee**, decided on 02.02.2026.

7. On the other hand, counsel for the petitioner has rightly pointed out that in the initial reply, there was no such defence taken, and therefore, the respondents cannot be allowed to blow hot and cold and take a contrary stand as to what was in the reply to the notice sent under Section 21 of the 'Act'.

8. A perusal of the said notice dated 03.07.2024 (**Annexure P-3**) would go on to show that the specific averments



were made that as per the Retirement Deed signed by the petitioner, all legal obligations had been fulfilled and all the dues owed to him, had been settled, which the petitioner stated to have been duly acknowledged. Further, the averments has been made that there existed no outstanding amount to be paid and moreover, there was no arbitration agreement between the parties and the arbitration notice was an attempt to bind parties who were not signatories to the alleged arbitration agreement. Further, the defence was taken that the respondents did not owe any payment as alleged in terms of the Retirement Deed and there was no basis for arbitration. Lastly, the final nail in the coffin was that the Arbitration Reference Notice dated 04.06.2024 had been issued nearly 16 months after Retirement Deed was executed and contained inaccurate information.

9. In such circumstances, this Court is of the considered opinion that there is a tacit admission of the existence of the Retirement Deed at the outset. The written reply filed now is only an attempt to muddy the waters and introduce a defence that cannot be permitted, as parties cannot be allowed to change their specific stand taken earlier.

10. Reliance can be placed upon the judgment of the Apex Court in ***Suzuki Parasrampuriah Suitings Private Limited***



Vs. Official Liquidator of Mahendra Petrochemicals Limited (in Liquidation) and others (2018) 10 SCC 707, wherein the Apex Court had noticed that a litigant had made a complete volte-face from their earlier stand, which was surprisingly contrary to their own pleadings. The Apex Court has held that while a litigant can take different stands at different times, but they cannot take contradictory stands in the same case. A party cannot be permitted to approbate and reprobate on the same facts or take inconsistent and shifting stands.

11. Reliance was placed upon the another judgment of the Apex Court in ***Amar Singh Vs. Union of India, (2011) 7 SCC 69***, wherein it has been held that a litigant who comes to the Court, must come with clean hands, and since an action at law is not a game of chess, the said principles would apply herein.

12. Placing reliance upon ***Rajia Begum's*** case (supra), would not be justified as such in the peculiar facts and circumstances of the case. In that case, the Apex Court had noticed that there were two proceedings before the High Court. In one proceedings, directions had been issued to resolve the disputes through arbitration, while in the other proceeding, the High Court declined to appoint an arbitrator on the ground that the existence of an arbitration agreement was in serious doubt. It



was noticed that the subsequent order passed had been upheld by the Apex Court, bringing finality to the assessment made, with no subsequent change in circumstances. In these circumstances, the Apex Court concluded that the doubtful existence of the arbitration agreement is a relevant consideration while examining an application under Sections 8 and 11 of the Act.

13. The said judgment, thus, is not applicable in the peculiar facts and circumstances, as there is no such finding by this Court or any other Court doubting the correctness of the Retirement Deeds.

14. Resultantly, the application is allowed and Sh. Paramjeet Singh Dhaliwal (former Judge, Punjab & Haryana High Court at Chandigarh) R/o House No.2254, Sector 35-C, Chandigarh (Mobile No.7837049204 and 9814115825) is appointed as an Arbitrator to adjudicate the dispute between the parties. After his disclosure in writing is obtained in terms of Section 11(8) of the Act and only after receipt thereof, his appointment, as an Arbitrator, shall come into force.

15. On his giving consent to arbitrate the dispute between the parties as an Arbitrator, Sh. Paramjeet Singh Dhaliwal (former Judge) shall enter into reference, and shall pass an award in accordance with law.



16. Copy of this order be furnished to the learned counsel for the parties as also furnished to the learned Arbitrator. The learned Arbitrator so appointed shall be entitled to fee as per stipulation contained in 4th Schedule appended to the Arbitration and Conciliation Act, 1996.

17. Accordingly, the application is disposed of alongwith pending miscellaneous application(s), if any.

3rd July, 2026
(Munish Thakur)

(G.S. Sandhawalia)
Chief Justice