

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH at JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

AP 2 of 2025

**Sri Mrinal Paul
Vs.
Sri Utpal Paul & Anr.**

Before: The Hon'ble Justice Arijit Banerjee

For the Petitioner : Mr. Subham Ghosh, Adv.
Mr. Mayank Roy, Adv.

For the Opposite Party No. : Mr. Nirmalya Paul, Adv.
1-in-person Mr. Utpal Paul, Adv.

For Orders On : 04.04.2025

Arijit Banerjee, J. :-

1. This is an application under Section 11(5) of the Arbitration and Conciliation Act, 1996, (in short the 'said Act'). The main prayers in the application read as follows:-

“a) A competent and independent and impartial person be appointed as the sole Arbitrator to arbitrate the dispute between the parties hereto and referred to in paragraphs 4 and 5 hereinabove of the foregoing petition.

b) All the disputes stated in paragraphs herein above be referred to the said Arbitrator to be appointed & the said Arbitrator be directed to enter into reference and to adjudicate the disputes to aforesaid and to make and publish the award in terms of the provision of the Arbitration and Conciliation Act, 1996 (as amended up to date).”

2. Briefly stated, the material facts of the case are that in the year 1988, the petitioner (Mrinal Paul), the respondent no. 1 herein (Utpal Paul) and one Pabitra Paul constituted a partnership by executing a deed of partnership dated April 1, 1988, for the purpose of carrying on business of Motor parts, accessories and other allied articles, under the name and style of “M/s Paul Auto Parts”.

3. Pabitra Paul voluntarily retired from the partnership with effect from March 31, 2006. His account with regard to the partnership business was fully and finally settled.

4. Thereafter, the partnership was re-constituted with Mrinal and Utpal as partners by execution of a deed of partnership dated April 1, 2006.

5. It appears that Mrinal and Utpal have fallen apart. By issuing lawyer’s notices dated July 20, 2024, and September 20, 2024, Mrinal expressed his desire to dissolve the partnership firm and called upon Utpal to settle the

accounts. According to Mrinal, He had reposed brotherly faith in Utpal and had allowed Utpal to look after the day to day affairs of the partnership business. However, Utpal has betrayed such trust and has diverted funds from the partnership till for his personal benefit.

6. The partnership deed dated April 1, 2006, contains an arbitration clause, which reads as follows:-

“22. That in case of disputes between the partners regarding the interpretations of the Deed of Partnership the matter shall be referred to arbitration under the provisions of the Indian Arbitration Act then in force.”

7. By a lawyer's notice dated December 28, 2024, Utpal invoked the said Arbitration Clause. The relevant portion of the said notice reads as follows:-

“7. That in view of the above, it is evident that disputes and differences have been arisen in between you and my client with regard to the said partnership business run under the name and style of M/s. Paul Auto Parts which can only be resolved through arbitration as per provision of the Arbitration & Conciliation Act 1996 (as amended upto date).

8. That my client, without prejudice to any of his rights that may arise in his favour under the Arbitration and Conciliation Act, 1996 (as amended up to date) or any other law for the time being in force, is left with no other option but to put into motion, the arbitration clause being Clause No. 22 of the Deed of Partnership dated 01st

April, 2006 and in pursuance of the same, I am to inform you that my client has resolved to name Mr. Dhananjay Nayak, learned Advocate, Kolkata, to be the sole Arbitrator to resolve the disputes and differences that have arisen in between you and my client as aforesaid.

I am therefore calling upon you on behalf of my client, Sri Mrinal Paul to furnish your absolute, unequivocal and mutual consent to the appointment of Mr. Dhananjay Nayak, Learned Advocate, Kolkata as the sole arbitrator to resolve and arbitrate the disputes and differences and pass a reasoned arbitral award in pursuance thereof, within 30 (thirty) days from the date of receipt of this notice and oblige.”

8. Not having received any response to the aforesaid notice, Mrinal has filed the present application for appointment of an arbitrator.

9. Utpal has appeared in person. He is agreeable to have the disputes and differences between the parties resolved through arbitration. However, he is not willing to accord his consent to the appointment of Mr. Dhananjay Nayak, advocate. He says that the Court should appoint an independent person as arbitrator.

10. Mr. Ghosh, learned Advocate for the petitioner accepts the suggestion made by Utpal. He also says that the Court should appoint an impartial person as arbitrator.

11. Accordingly, I appoint Sri Pritam Ray, Advocate (Mobile: 9593220707) as arbitrator to adjudicate the disputes and differences between the parties which have arisen in relation to the aforesaid partnership firm. The provisions of the Arbitration and Conciliation Act, 1996 (as amended from time to time) including the Schedules thereto, shall govern the arbitration proceeding and also the issues like the arbitrator's remuneration, etc. I request the arbitrator to complete the arbitration proceeding as soon as possible. The arbitrator will be entitled to take the assistance of a Chartered Accountant if he thinks that the same is necessary for settling the accounts. Needless to say, the parties will bear the remuneration of such Chartered Accountant.

12. Since, I have not called for affidavits, the allegations in the petition shall be deemed to be disputed by the respondent no. 1.

13. A. P. No. 2 of 2025 is accordingly disposed of.

14. Urgent Photostat certified copies of this Order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(ARIJIT BANERJEE, J.)