

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

JUSTICE SUJOY PAUL

&

JUSTICE AMAR NATH (KESHARWANI)

ARBITRATION APPEAL No.15 OF 2023

BETWEEN :-

**RATAN LALCHANDANI, S/O SHRI
CHANDRA BHAN LALCHANDANI,
AGED ABOUT 44 YEARS, PARTNER
OF DISSOLVED PARTNERSHIP FIRM
'M/S THE TOUCH' REGISTERED
OFFICE AT HALL NO.02, FIRST
FLOOR, GTB, COMPLEX, TT
NAGAR, BHOPAL. OCCUPATION-
BUSINESSMAN.**

**(APPLICANT NO.1 IN THE LOWER
COURT)**

.....APPELLANT

(BY SHRI SIDDHARTH GULATEE - ADVOCATE FOR THE APPELLANT)

AND

**GOPALDAS KUKREJA S/O
GORDHANDAS KUKREJA, AGED –
ABOUT 64 YEARS, PARTNER OF
DISSOLVED PARTNERSHIP FIRM
M/S THE TOUCH R/O. 6 NAVRATNA
BAGH MANORMAGANJ INDORE
(M.P.)**

**(NON-APPLICANT NO.1 IN THE
LOWER COURT)**

.....RESPONDENT

(BY SHRI R.K. SANGHI – ADVOCATE FOR THE RESPONDENT)

Reserved on	:	03/02/2023
Pronounced on	:	07/02/2023

*This Arbitration Appeal having been heard and reserved for judgment, coming on for pronouncement this day, **Justice Sujoy Paul** pronounced the following :*

J U D G M E N T

The interesting conundrum in this appeal filed under Section 37 of Arbitration and Conciliation Act, 1996 ('Arbitration Act') is whether the learned Commercial Court, Bhopal was justified in passing the impugned order dated 11.1.2023 and rejecting the application filed by appellant under Section 9 of the said Act for want of territorial jurisdiction in a case of rendition of account where Registered Office in which account is kept is situated at Bhopal.

2. Draped in brevity, the admitted facts between the parties are that appellant and respondent executed a partnership deed on 03.7.2013 Annexure A/3. The said partnership deed was dissolved at the instance of respondent vide notice dated 21.1.2020. After dissolution of said deed, respondent entered into a 'Joint Development Agreement' with another builder on 13.1.2022 (Annexure A/9). However, said agreement was cancelled on 28.10.2022.

3. The appellant entered into correspondence with respondent for resolution of dispute by taking aid of Clause-18 of deed of partnership dated 03.7.2013. Since, no arbitrator could be appointed as per dispute resolution clause aforesaid, the appellant filed an application under

Section 11(6) of the Arbitration Act A.C. No.11/2023 which is pending consideration before this Court.

4. It is also not in dispute that a question cropped up regarding proper stamping of the said deed before the Collector of Stamps (District Indore-2) in Case No.33/B/103/12-13/33. In the said case, it was a common stand of both the parties that the deed dated 03.7.2013 is in-fact a 'Partnership Deed' and not a 'Development Agreement'.

5. The appellant filed an application under Section 9 of the Arbitration Act before learned Commercial Court, Bhopal which was registered as Case No. MJC AV/212/22. In addition, an interlocutory application for grant of ad-interim relief was also filed. Upon receiving the notice, other side entered appearance and raised objection of territorial jurisdiction.

6. Learned Commercial Court vide impugned order dated 11.1.2023 dismissed the application for want of territorial jurisdiction.

7. Parties during the course of hearing placed reliance on following clauses of the deed of partnership dated 03.7.2013 :-

“THIS DEED OF PARTNERSHIP executed on the 03rd day of July 2013 between :-

Whereas, the above named Parties intend to carry on business of running a Marriage Garden, Hotel, Restaurant and other allied and connected activities relating to above business on their own or leased land or otherwise to invest and any other activities as mutually agreed by the parties hereto from time to time under the name and style of **M/S. THE TOUCH at Hall No.2, A' Block, GTB Complex, 1st Floor, New Market, Bhopal**

462003 in partnership vide partnership agreement executed between them on 03.07.2013.

1. THAT the business of partnership shall be that of running a Marriage Garden, Hotel, Restaurant and other allied and connected activities relating to above business on their own or leased land or otherwise to invest and any other activities as mutually agreed by the parties hereto from time to time under the name and style of **M/S. THE TOUCH at Hall No.2, A' Block, GTB Complex, 1st Floor, New Market, Bhopal 462003**. But it shall be open to the partners to undertake other kind of business or to expand and/or to carry the firms business at other place as they may decide mutually from time to time.

2. THAT the duration of this partnership which has commenced from 03.07.2013 shall be at WILL.

3. THAT the capital required for the business of the partnership firm shall be contributed and arranged by the partners with their mutual consent.

4. THAT the First Party is the owner of Land situated at Patwari Halka No.25, survey No.1/1/3, Gram Bicholi Hapsi, Tehsil & Distt. Indore of area about 1.62 hectare. The said land is situated at Scheme no.175 and is being acquired by Indore Development Authority. The acquisition of the said land is challenged before Commissioner Indore by the First Party and decision is awaited. The property so owned by him as absolute owner thereof is contributed by him as capital of the partnership and a sum of Rs.3,10,00,000.00 (Rupees Three Crore Ten Lakhs) agreed to be credited to his capital account by debiting the corresponding amount to Land account in the books of accounts of the firm to which the both parties

to this deed have also agreed. The First Party has no other interest in the said property excepting as a partner alongwith the other partner. And that the Second Party shall invest Rs.1,55,00,000.00 (Rupees One Crore Fifty Five Lakhs) for the development of land and running of the business over a period of time.

5. THAT the shares of partners in the profit and losses of this firm shall be as under :-

<u>NAME OF PARTNERS</u>	<u>SHARE IN PROFIT AND LOSSES</u>
a) SHRI GOPALDAS KUKREJA	50% (FIFTY PERCENT)
b) SHRI RATAN LALCHANDANI	50%(FIFTY PERCENT)

17. THAT on the dissolution of the firm for any reason whatsoever no account of the goodwill of the firm be taken and none of the partners including the estate of the deceased partner shall be entitled to receive any share in the goodwill of the firm, if any, on which dissolution. It is also agreed that the dissolution account shall be made and settled between parties in accordance with the realizable value of the assets and the liabilities of the firm so dissolved. Also if any immovable property/stock remains in the firm, it shall be distributed equally between the parties.

18. THAT in the event of any dispute between the partners or their legal representatives, either in the conduct of the business or any regards terms of this partnership or on dissolution, such disputes will be referred to an arbitrator of one person from each part as agreed to between the partners and/or the legal representatives of the deceased partners and in event of their being no agreement on appointment of such arbitrators, to as many arbitrators as appointed by each of the partners and decision of such arbitrator/arbitrators will be binding on all the parties. In case of more than one arbitrator and in absence of

consensus between them the difference will be referred to an umpire as agreed between them and his decision will be binding on all the parties.

(Emphasis Supplied)

Contention of Appellant :

8. Shri Siddharth Gulatee, learned counsel for the appellant submits that the claim of appellant is solely related to rendition of account. The appellant is not claiming any right over the land situated at Indore which finds mentioned in Clause-4 of the partnership deed. As per the deed, registered office of dissolved partnership firm is at Clause-1 **M/S. THE TOUCH at Hall No.2, A' Block, GTB Complex, 1st Floor, New Market, Bhopal 462003.** It is averred that the partnership firm had engaged professional service of a number of professionals like Surveyor, Architect, Accountant etc. in Bhopal for the purpose of achieving the objectives of partnership firm. The accounts and title documents of land were also kept at the said registered office of the firm at Bhopal. Since, books of accounts of partnership firm were regularly kept and maintained at the said registered office at Bhopal, in a case of this nature relating to rendition, the Commercial Court, Bhopal certainly had the territorial jurisdiction.

9. To elaborate, it is submitted that Section 20 of the Code of Civil Procedure, 1908 (CPC) makes it clear that even if a very small part of cause of action has arisen within the territory of a Court, it can certainly entertain the suit. Fraction of cause of action or part thereof if falls within the territory of a Court, is sufficient for the Court to exercise the jurisdiction. Percentage of whole cause of action is

immaterial. Reference is made to **AIR 1965 MYSORE 316 D. Munirangappa vs. Amidayala Venkatappa and another.** Orissa High Court judgment reported in **1988 SCC OnLine Ori 252 Jayakrushna Sahu vs. Harinarayan Ram** is pressed in service which is based on a Privy Council judgment in the case of **Luckmee Chund and others vs. Zorawur Mull and others.** It is urged that a suit for accounts in a partnership lies at the place where business is carried on and books of accounts are kept and where accounts are to be rendered.

10. Shri Siddharth Gulatee, learned counsel by placing reliance on Section 48 and 53 of the Partnership Act, 1932 (Partnership Act) contended that in cases relating to rendition of accounts, the Court below certainly had jurisdiction.

Respondent's contention :

11. Sounding a *contra* note, Shri Sanghi placed heavy reliance on Clause-4 of the deed dated 03.7.2013 and urged that land is situated at Indore. As per Section 16 of the CPC, suit must be instituted where subject matter situate. This of-course is subject to pecuniary or limitation prescribed by any law. As per Section 16(d) of CPC for determination of any other right or interest in immovable property, the suit needs to be instituted where land is situate. To bolster this submission, he placed reliance on **Harshad Chiman Lal Modi vs. DLF Universal Ltd. (2005) 7 SCC 791; Giridharilal Surana vs. Mirzamal Agarwalla 1952 SCC OnLine Gau 53; Globe Co-generation Power Limited vs. Hiranyakeshi Sahakari Sakkere Karkhane Niyamit 2004 SCC OnLine Kar 155** and **Inox Air**

Products Ltd. vs. Rathi Ispat Ltd., 2006 SCC OnLine Del 1146.

Shri Sanghi also placed reliance on Section 37 and 39 of the Contract Act. He further submits that Bhopal was not principal place of business. Clause-4 of the said deed made it obligatory to deposit Rs.1,55,00,000/- by the present appellant after fulfilling the formalities of previous part of this clause by the present respondent. The present respondent fulfilled his part of the responsibility flowing from Clause-4 of the said deed but appellant did not deposit any amount.

12. Shri R.K. Sanghi also placed reliance on Clause 18, i.e. Dispute Resolution Clause. It is urged that the land is situated at Indore. The deed was registered with Sub Registrar, Indore. The appellant did not deposit a single penny as required in Clause 4 of the said deed.

13. Learned counsel for the respondent at the cost of repetition placed heavy reliance on Section 16 of the CPC and submits that the jurisdiction will be with the Court within whose jurisdiction the property is situated. Thus, the Commercial Court, Bhopal has not committed any error of fact or law in rejecting the application of appellant for want of jurisdiction.

14. Parties confined their arguments to the extent indicated above.

15. We have heard the parties at length and perused the record.

Findings :

16. The impugned order dated 11.01.2023 (Annexure A/1) shows that Court below has dealt with the question of territorial jurisdiction in para-17 of the impugned order. By taking aid from Section 20 of CPC, the learned Court opined that since, respondent is the resident of Indore

and the disputed property is situated at Indore, cause of action has arisen at Indore.

17. Clause (b) of Section 20 of CPC in no uncertain terms makes it clear that even if a minuscule part of cause of action arises within the territory of a Court, it certainly has jurisdiction. The judgment of Mysore High Court in **D. Munirangappa (supra)** deals with this aspect.

18. The place of residence of respondent, location of property became the reason for the Court below to reach to the conclusion that cause of action has arisen at Indore. This aspect requires serious consideration. A careful perusal of impugned order shows that Court below has not examined the question of territorial jurisdiction by taking into account the fact that claim of appellant is relating to rendition of account. Appellant is not aggrieved by dissolution of the firm. He is also not claiming any right or interest in immovable property situated at Indore. This material aspect has escaped notice of learned Commercial Court while deciding the question of territorial jurisdiction.

19. The ancillary question is whether in a case pertaining to rendition of account the Commercial Court Bhopal had jurisdiction. The Privy Council in **Luckmee Chund and others vs. Zorawur Mull and others** held as under :-

“Now, where can it be said that the cause of action, supposing it exists for that balance, properly arose? Muttra was, undoubtedly, the central place of business; at Muttra the partnership books were kept;

at Muttra the partners would have recourse to those books for the purpose of ascertaining the state of the transactions between them; and if, in the result, a balance was due to the Appellants, Muttra would be the place where the payment of that balance would have to be made. It, therefore, appears clear to their Lordships that if there is a cause of action arising out of the balance resulting from these partnership transactions, that cause of action arose at Muttra.”

(Emphasis Supplied)

The principle laid down by Privy Council was followed by Orissa High Court in **Jayakrushna Sahu (supra)**.

20. This point, in our opinion, is no more *res integra*. The Division Bench of Allahabad High Court (consisting of Sir Henry Richards, Knight, C.J. and Sir Pramada Charan Banerji, J.) while dealing with Section 16(a) and (d) of CPC way back in the case of **Durga Das and another vs. Jai Narain and others 1917 SCC OnLine All 288** opined as under :-

“Clause (d) clearly refers to other suits of a like nature where the title to, or some interest **in, the property is in dispute and the court has to determine the matter.** Again, in the present case there is no dispute at all as to whom the property belongs to. Nor is there any dispute as to any interest in this property. The only event that may happen is that possibly in the course of the suit the factory may be ordered to be sold with a view to the distribution of the assets of the partnership. We are clearly of opinion that a suit for dissolution of partnership with the usual ancillary relief is not a suit for the “determination of any other right to or interest in

immovable property” within the meaning of clause (d).”

(Emphasis Supplied)

21. It is noteworthy that the Division Bench considered the purport and meaning of Clause (d) of Section 16 of CPC on which heavy reliance is placed by Shri R.K. Sanghi. Curiously, it was not a claim about rendition of account, indeed, it was a suit for dissolution of partnership pregnant with ancillary reliefs, yet Court opined that it does not fall within the expression ‘*determination of any other right to or interest in immovable property*’.

22. In **Guduthuru Thimmappa vs. V. Balakrishna Mudaliar and another 1925 SCC OnLine Mad 251**, the Court while considering Section 16 of CPC opined that the plaintiff at Bellary and the defendants at Coimbatore entered into a partnership for the purchase and sale of cotton. It was arranged that the purchases of cotton should be effected in several places but sale must be made only at Coimbatore. The accounts of the partnership were maintained at Bellary. In a suit for dissolution of partnership brought by the plaintiff in the Bellary Court, the defendant pleaded that the Bellary Court had no jurisdiction to entertain the suit. The Court ruled that -

“That since the partnership accounts were maintained at Bellary that Court had jurisdiction to entertain the suit.

Where a partnership business is carried on in two places the cause of action arises at both the places and the Courts have jurisdiction to entertain a suit for dissolution of partnership in either of these places.”

(Emphasis Supplied)

23. Reference may also be made to a Division Bench judgment of Calcutta High Court reported in **AIR 1989 Cal 254 Tilokram Ghosh and others vs. Smt. Gita Rani Sadhukhan and others**. The relevant portion reads as under :-

“18. The counsel for the respondent then strenuously argued that the main assets of the firm, being immovable property situate outside jurisdiction, this Court has no jurisdiction to entertain the present suit for dissolution of this firm as it is a suit for land. This Court is not impressed by this argument. In **AIR 1966 SC 1300 (Addanki Narayanappa v. Bhaskara Krishnappa)** the Supreme Court while considering the provisions of Sec. 48 of the Partnership Act came to the conclusion :—

“.....that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership, it becomes the property of the firm and what a partner is entitled is his share of profit, if any, accruing to the partnership from the realisation of this property and upon dissolution of the partnership to a share in the money representing the value of the property..... During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership-property to any one.”

19. It was, therefore, held by the Supreme Court that the interest of the partners in the partnership is movable property. This Court, on the basis of this authority, rejects the aforesaid contention of the

counsel for Sadhukhans. **A suit for dissolution of Partnership and account cannot be treated as a suit for land even if its assets consist of immovable properties.**

(Emphasis Supplied)

This judgment was quoted with profit by Calcutta High Court in **AIR 1993 Cal 70 Md. Hassen Hashmi vs. Sm. Kaberi Roy and others.**

24. The matter may be viewed from another angle. Section 16(d) of CPC reads as under :-

“16. Suits to be instituted where subject-matter situate.- Subject to the pecuniary or other limitations prescribed by any law, suits,-

(a) x x x

(b) x x x

(c) x x x

(d) for the determination of any other right to or interest **in immovable property,”**

(Emphasis Supplied)

25. A microscopic reading of Clause (d), in our judgment, shows that it talks about determination of any other right to or interest *in immovable property*. The statute is worded in such a manner which makes it clear that it talks about right or interest *in immovable property*. It does not talk about right or interest related to, connected with or arising out of any immovable property. This is trite that when language of statute is plain and ambiguous, it must be followed and given effect to as such irrespective of its consequences (**See : Nelson Motis vs. Union of India (1992) 4 SCC 711**).

26. In view of foregoing analysis, in our considered view, Section 16 is not an impediment for maintaining the application under Section 9 before the Commercial Court at Bhopal. The judgments cited by Shri Sanghi which are based on Section 16 of CPC are, therefore, of no assistance to the respondent. For example, in the case of **Harshad Chiman Lal Modi (supra)** the suit was for specific performance of agreement for sale of immovable property seeking relief of execution of sale deed and delivery of possession. Thus, it was a claim of plaintiff in immovable property. In this backdrop, the Court delivered the judgment which has no application in the instant case.

27. At the cost of repetition, since Section 16(d) of CPC cannot be pressed into service, in a case of this nature, where the claim is regarding rendition of account, judgments cited by Shri Sanghi interpreting Section 16 are of no assistance to him.

28. Admittedly, the registered office of the dissolved firm is situated at Bhopal. Its accounts are maintained at Bhopal. Thus, as per judgment of Privy Council in **Luckmee Chund, Tilokram Ghosh and Jayakrushna Sahu (supra)** the part of cause of action in a case relating to rendition of accounts has certainly arisen within the territory of Commercial Court, Bhopal. The Court below has certainly erred in dismissing the application filed under Section 9 of the Arbitration Act for want of jurisdiction.

29. Consequently, the impugned order dated 11.01.2023 is set aside. Case No. MJC AV/212/22 is restored to its original file before the learned Commercial Court. The parties shall appear before the

Commercial Court on 14.2.2023 for which no separate notice will be required to be issued to them. The learned Commercial Court shall make endeavour to decide the pending interlocutory application for grant of ad-interim relief in accordance with law expeditiously. It is made clear that this Court has not expressed any opinion on the merits of the case.

30. The appeal is **allowed** to the extent indicated above.

(SUJOY PAUL)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

PK