



REPORTABLE

CIVIL APPEAL NO. OF 2026
(@ SLP (C) NO.6013 OF 2021)

VERSUS

WITH

VERSUS

J U D G M E N T

ALOK ARADHE, J.

Leave granted.

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directed the parties to resolve their disputes through arbitration and whereas in another proceeding, declined to appoint an arbitrator on the ground, that the existence of an arbitration agreement is itself in serious doubt. A common issue namely, whether the disputes can be referred to arbitration or an arbitrator can be appointed when the very existence of arbitration agreement itself is seriously disputed on the allegations of forgery and fabrication, arises for consideration in these appeals.

(i) NARRATION OF FACTS

3. The appellant, Barnali Mukherjee, in the appeal @ SLP (C) No. 20262 of 2021 (appellant), Aftabuddin (respondent no.2) and Raihan Iqbal (respondent no.3), constituted a partnership firm styled as 'M/s RDDHI Gold' (firm) by virtue of partnership deed dated 01.12.2005. Rajia Begum (respondent no.1) claims that the respondent nos.2 and 3 executed a power of attorney on 17.04.2007 empowering her to manage the affairs of the firm on their behalf pursuant to which she executed a deed of admission and retirement (Admission Deed) by which respondent nos.2 and 3 retired from the firm.

4. The appellant contends that the business of the reconstituted partnership firm was absorbed and taken over by a company named 'RDDHI Gold Pvt. Ltd.' (company) pursuant to the absorption deed dated 27.02.2011. On 02.10.2016, the respondent no.1 issued a notice to the appellant asserting that, on the basis of the aforesaid Admission Deed dated 17.04.2007, she had acquired an interest to the extent of 50.33% in the erstwhile partnership firm and that respondent nos.2 and 3 had retired as partners in 2007 itself. The appellant by reply dated 21.11.2016, categorically denied the execution of the Admission Deed by her or by the other respondents and further denied the very induction of the respondent no.1 in the firm as a partner at any point in time. Thus, the appellant took a stand that the Admission Deed is a forged and fabricated document, concocted by the respondent no.1.

(ii) APPLICATION UNDER SECTION 9 OF THE ACT

5. The respondent no.1 applied to the Trial Court under Section 9 of the Arbitration and Conciliation Act, 1996 (Act), for preservation of the subject matter of dispute and for appointment of receiver for the Company which came to be allowed by the Trial Court. The High Court, by an order dated

04.05.2018, allowed the appeal filed by the appellant *inter alia* finding that the very existence/execution of the 'Admission Deed' is in dispute and, in view of the availability of cogent material which would indicate the non-existence of the Admission Deed, it would not be prudent on the part of the Court exercising jurisdiction under Section 9 of the Act, to accord interim protection to the respondent no.1 who has failed to demonstrate the existence of an arbitration agreement in a *prima facie* manner. Aggrieved by the order of the High Court dated 04.05.2018, the respondent no.1 preferred an Appeal to this Court which came to be dismissed. Thus, the said order of the High Court dated 04.05.2018, rejecting the application of the respondent no.1 under Section 9 of the Act, attained finality between the parties.

(iii) APPLICATION UNDER SECTION 8 OF THE ACT

6. The appellant, on 16.05.2018, filed a civil suit bearing No.71/2018 before the competent civil court seeking the relief of declaration and injunction against the respondent no.1 *inter alia* seeking a declaration that the 'Admission Deed' is a forged document. The respondent no.1, in the said suit, preferred an application to the Trial Court under Section 8 of the Act, to refer

the suit to arbitration, owing to the existence of an arbitration agreement between the parties in respect of disputes concerning the 'Admission Deed'. The said application preferred by the respondent no.1, under Section 8 of the Act, came to be dismissed by the Trial Court vide order dated 06.09.2018 which *inter alia* held that the allegations of fraud relating to the validity of the impugned Admission Deed were complicated in nature and that the respondent no.1 had failed to produce either the original Admission Deed or a certified copy thereof.

- 7.** The respondent no.1 preferred an appeal against the said Order dated 06.09.2018, before the Additional District Judge, who also dismissed the appeal in terms of the order dated 25.09.2020. Being aggrieved, the respondent no.1 further preferred a revision under Article 227 of the Constitution to the High Court, which by order dated 24.09.2021 set aside the orders of the Trial Court and the First Appellate Court, and allowed the revision filed by the respondent no.1 by referring the dispute in Suit No.71/2018 to be resolved through arbitration.

(iv) APPLICATION UNDER SECTION 11 OF THE ACT

8. Parallely, when the aforesaid proceedings under Sections 8 and 9 were ongoing, the respondent no.1 had also filed a petition under Section 11 of the Act before the High Court, seeking appointment of an arbitrator for resolving the disputes between the parties which had arisen in terms of the arbitration clause contained in the 'Admission Deed'. The High Court dismissed the petition filed by the respondent No.1, under Section 11 of the Act, by order dated 11.03.2021, *inter alia* holding that it would not be expedient to appoint an arbitrator till such time that the issue regarding the existence of an arbitration agreement between the parties has been answered finally. In the appeal @ SLP (c) No.6013 of 2021, the respondent no.1 has challenged the judgment and order dated 11.03.2021 by which her application under Section 11 of the Act has been dismissed. In the appeal @ SLP (C) No.20262 of 2021, the appellant has assailed the judgment dated 24.09.2021 by which petition filed by the respondent no.1 under Article 227 was allowed and the title suit filed by the appellant was referred to arbitration.

(v) SUBMISSIONS

9. The learned counsel for respondent no.1 submitted that the observations made by the High Court while deciding an appeal, arising out of an order under Section 9 of the Act, are only for the purposes of deciding the appeal and it has been clarified that the views expressed in the order are tentative and should not prejudice the respondent no.1 in any other proceeding. Alternatively, it is contended that *prima facie* observation on the existence of arbitration agreement made in an appeal, arising out of an order under Section 9 of the Act, cannot affect the jurisdiction of the Court under Section 11 of the Act. It is urged that the dispute pertains to allegations of fraud challenging the arbitration agreement itself, is arbitrable and well within the jurisdiction of the arbitrator. It is submitted that the High Court, in exercise of supervisory powers under Article 227, has rightly set aside the orders passed by the Trial Court and the Appellate Court. It is, therefore, contended that the dispute be referred to the arbitration by appointing an arbitrator and the order dated 24.09.2021 passed by the High Court under Article

227 be maintained. In support of the aforesaid submissions, reliance has been placed on the decisions of this Court¹.

10. On the other hand, learned senior counsel for the appellant submitted that the Admission Deed is forged and fabricated document and there is no privity of contract between the parties. It is submitted that the High Court in its order dated 04.05.2018 has categorically recorded a finding that the Admission Deed is not a genuine document. It is submitted that the material on record does not indicate that the respondent no.1 has acted as a partner since 2007 till date. It is contended that the Admission Deed is a manufactured and a forged document. It is argued that the High Court erred in interfering with the orders passed by the Trial Court and the Appellate Court in exercise of powers under Article 227 of the Constitution of India. In support of the aforesaid submissions, reliance has been placed on the decisions of this Court².

¹ A. Ayyasamy v. A Paramasivam & Others, (2016) 10 SCC 386; Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710; Vidya Drolia & Ors. v. Durga Trading Corporation, (2021) 2 SCC 1; N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd., (2021) 4 SCC 379; Avitel Post Studios Ltd. & Ors. v. HSBC PI Holdings (Mauritius) Ltd., (2021) 4 SCC 713; Sushma Shivkumar Daga & Anr. v. Madhurkumar Ramkrishnaji Bajaj & Ors., (2024) 12 SCC 253; K. Mangayarkarasi & Anr. v. N.J. Sundaresan & Anr., (2025) 8 SCC 299; ITI Ltd. v. Siemens Public Communications Network Ltd., (2002) 5 SCC 510; Nirma Ltd. v. Lurgi Lentjes Energietechnik GMBH, (2002) 5 SCC 520; Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd. & Anr., (2020) 15 SCC 706 and Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75.

² A. Ayyasamy (supra); Vidya Drolia & Ors. (supra); SBP & Co. v. Patel Engineering Ltd. and Anr. (2005) 8 SCC 618 and Deep Industries Ltd. (supra).

(vi) ISSUE

11. We have bestowed our consideration upon rival submissions and have carefully traversed the record placed before us. The central question which emerges for our determination is whether in the factual matrix of the case, the disputes between the parties could have been referred to the arbitration under Section 8 of the Act and correspondingly whether the High Court was justified in declining the appointment of an arbitrator under Section 11 of the Act.

(vii) IMPACT OF FRAUD ON ARBITRABILITY

12. The legal position with regard to the impact of fraud on arbitrability of a dispute under the Act is well delineated by decisions of this Court. A two-Judge Bench of this Court³ held that mere allegation of fraud simpliciter may not be a ground to nullify the arbitration agreement between the parties, but where the court finds that there are serious allegations of fraud which make a case of criminal offence or where the allegations of fraud are so complicated, which need to be decided on the basis of voluminous evidence, the court can sidetrack the arbitration agreement and proceed with the suit. It has further been held

³ A. AYYASAMY v. A. PARAMASIVAM AND OTHERS, (supra)

that the court can proceed with the suit in cases where the fraud is alleged against the arbitration provision itself or is of a such a nature which permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself which contains an arbitration clause or the validity of the arbitration clause itself.

- 13.** The aforesaid principle was referred to with approval, by another two-Judge Bench of this Court⁴ and two working tests were laid down for determining serious allegations of fraud, which would render the subject matter of an agreement non-arbitrable namely, (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud, touch upon the internal affairs of the parties, *inter se* having no implication in the public domain. It was further held that the first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at

⁴ AVITEL POST STUDIOZ LIMITED AND OTHERS v. HSBC PI HOLDINGS (MAURITIUS) LTD. (*supra*)

all. Thus, in a case where plea is taken with regard to non-existence of an arbitration clause or agreement, the same would amount to serious allegation of fraud and would render the subject matter of an agreement non-arbitrable.

14. Recently, a two-Judge Bench of this Court in **Managing Director Bihar State Food and Civil Supply Corporation Limited**⁵ (to which one of us P.S. Narasimha, J. was a party) took note of the previous decisions of this Court⁶ and restated the principles governing arbitrability in cases involving allegations of serious fraud. The relevant extract of para 21 of the decision in **Managing Director (supra)** is extracted below:-

“21. In view of our decision, it is unnecessary to delve deep on this issue, but sufficient to restate the law on the subject. The position of law as it applies to initiation of arbitral proceedings in the teeth of allegations of criminality involved in the dispute, where criminal proceedings are either pending or to be initiated is considered in several decisions of this Court. In *A. Ayyasamy v. A. Paramasivam*, this Court has considered the matter in detail and laid down certain principles. As the relevant portions of the decision in *Ayyasamy* (supra) have been extracted in the

⁵ **Managing Director Bihar State Food and Civil Supply Corporation Limited and Another v. Sanjay Kumar**, (2025) SCC OnLine SC 1604

⁶ *A. Ayyasamy (supra)*, *Lalchand Shah v. Rishabh Enterprises*, (2018) 15 SCC 678, *Rashid Raza v. Sadaf Akhtar*, (2019) 8 SCC 710 and *Avitel Post Studios Limited And Others (supra)*

subsequent decisions of this Court in *Ameet Lalchand Shah v. Rishabh Enterprises*, *Rashid Raza v. Sadaf Akhtar*, and *Avitel Post Studios Limited v. HSBC PI Holdings (Mauritius) Limited*, we are of the opinion that our judgment need not be burdened by extracting excerpts from the judgment all over again. Instead, we seek to restate the principles as follows:—

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VI. “Serious allegations of fraud” is to be understood in the context of facts. In *Rashid Raza* (supra) this Court laid down two tests. The first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. The second test can be said to have been met in cases in which allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or mala fide conduct, thus necessitating the hearing of the case by a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain.

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IX. However, the allegations of fraud with respect to the arbitration agreement itself stand on a different footing. This position is generally recognized as a dispute which is in the realm of non-arbitrability. In such cases, the arbitral tribunal will not examine the allegation of fraud but will consider the submission only for the purpose of examining exclusion of jurisdiction. This principle, in its application, can be seen in the judgment of this Court in *Avitel*.”

15. Thus, it is evident that when an allegation of fraud is made with regard to arbitration agreement itself, such a dispute is

generally recognised as a dispute, which is in the realm of non-arbitrability and the court will examine it, as a jurisdictional issue only to enquire whether the dispute has become non-arbitrable due to one or the other reason.

(viii) ANALYSIS

16. In the backdrop of the aforesaid well settled legal position, we may advert to the facts of the case in hand. At the heart of the controversy lies the Admission Deed which is relied upon by respondent no.1 as the source of her induction into the firm and as foundation of arbitration agreement. On a *prime facie* consideration of the material placed on record, we find that there exists substantial and cogent material which casts serious doubt on the genuineness of the Admission Deed. The following circumstances are of particular relevance: -

“(i) Respondent No.2, Aftabuddin, is the husband of the respondent no. 1. While the Admission Deed records that Respondent Nos.2 and 3 retired from the partnership on 17.04.2007, the respondent No.1 herself admits that her husband continued to function as a partner of the firm from 2005 till 2010. This admission is wholly inconsistent with the recitals of the document relied upon by the respondent No.1.

(ii) The Admission Deed does not find mention in any contemporaneous documentary record for nearly nine years and surfaced for the first time only on 02.10.2016, when the respondent

No.1 issued a legal notice asserting a 50.33% stake in the firm. The complete absence of the document from the documentary trail prior thereto is a circumstance that cannot be lightly brushed aside.

(iii) The record further discloses that even after 17.04.2007, the respondent no.1 role in relation to the firm was not that of a partner but was confined to that of a guarantor for financial facilities availed by the firm. This is evident from several contemporaneous documents, including banking correspondent, promissory notes, hypothecation agreements, and letters addressed to Allahabad Bank between 2009 and 2010, all of which consistently portray Respondent Nos.2 and 3 as continuing partners of firm.”

17. It is also of significance that, in proceedings under Section 9 of the Act, the High Court, by order dated 04.05.2018, had recorded a *prima facie* finding that the existence of the Admission Deed was doubtful and declined to grant interim protection. The relevant extract of the order reads as under: -

“Even without considering such aspect of the matter, the order impugned cannot be sustained on the simple ground that it was the admitted case of the respondent herein that for a period of more than ten years after the purported execution of the document of April 17, 2007 she had not been allowed any access to the partnership business or its books of accounts or given a share of its profits. If a party had not been diligent enough to protect her interest for a period of ten years, the party could not have come to court and expected any positive order by way of interim measure.

Since it is evident that the court of the first instance in the present case failed to take relevant considerations into account while coming to an unreasoned tentative finding that the purported deed of April 17, 2007 had been executed by the parties, such order cannot be sustained.”

- 18.** The Special Leave Petition filed against the said order was dismissed by this Court, thereby lending finality to the said *prima facie* assessment between the parties, in the absence of any subsequent change in circumstances.
- 19.** While findings in Section 9 proceedings are undoubtedly *prima facie* in nature, such findings, when they attain finality, cannot be ignored in subsequent proceedings founded on the very same issue. The *prima facie* satisfaction recorded by the High Court regarding the doubtful existence of the arbitration agreement was, therefore, a relevant consideration while examining applications under Sections 8 and 11 of the Act.
- 20.** The cumulative effect of the aforesaid circumstances lends considerable credence to contention of the appellant that the Admission Deed is not genuine. At the very least, the Admission Deed is under grave cloud of doubt, requiring a detailed and full-fledged inquiry. In the present case, arbitration clause does not exist independently but is embedded in the document whose

existence is seriously disputed. Arbitration, it bears reiteration, is founded upon consent. A party may be bound by the arbitral process only if it is first shown, even at a *prima facie* level, that such a party had agreed to submit disputes to arbitration. Where the arbitration agreement itself is alleged to be forged or fabricated, the disputes ceases to be merely contractual and strikes at the very root of arbitral jurisdiction. A controversy of this nature falls squarely within the category of disputes that are generally recognized as non-arbitrable.

21. Both the Trial Court and the First Appellate Court had concurrently held that the allegations of fraud in the present case were serious and that the respondent no.1 had failed to produce the original Admission Deed or a certified copy thereof, as required under Section 8(2) of the Act. The aforesaid findings were not perfunctory, but were grounded in the material on record and in the statutory requirements.

22. The supervisory jurisdiction of the High Court under Article 227 of the Constitution is not an appellate jurisdiction in disguise, and it does not permit reappreciation of evidence. The High Court, while exercising jurisdiction under Article 227 of the Constitution, was not justified in dislodging the concurrent

findings and directing reference of the dispute to arbitration, particularly when the very existence of the arbitration agreement was under serious doubt.

23. Conversely, the High Court was correct in dismissing the respondent no.1's application under Section 11 of the Act. When the existence of the arbitration agreement itself is in serious dispute and requires adjudication, appointment of an arbitrator would be premature and legally impermissible.

(ix) CONCLUSION

24. For the reasons aforesaid, we hold as follows:

- (i) The dispute relating to the Admission Deed dated 17.04.2007 involves serious allegations going to the root of the arbitration agreement itself and is not amenable to arbitration at this stage.
- (ii) The order dated 24.09.2021 passed by the High Court allowing the respondent no.1's application under Section 8 of the Act is unsustainable and is hereby quashed and set aside.
- (iii) The order dated 11.03.2021 passed by the High Court rejecting the respondent no.1's application under

Section 11 of the Act warrants no interference and is accordingly affirmed.

25. In the result, the appeal @ SLP (C) No. 6013 of 2021 is dismissed whereas the appeal @ SLP (C) No. 20262 of 2021 is allowed. There shall be no order as to costs.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

**NEW DELHI;
FEBRUARY 2, 2026.**