
(2006) 02 AP CK 0107

In the Andhra Pradesh High Court

Case No : CRP No's. 3722, 3836 and 3910 of 1999 and 2980 and 3035 of 2002

Tetali Chinna Krishna Reddy

APPELLANT

Vs

Konala Nagalakshmi and Others

RESPONDENT

Date of Decision : 28-02-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(10), 11(2), 11(3), 11(4)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 49
Partnership Act, 1932 — Section 34, 44

Citation : (2006) 4 ALD 596 : (2006) 3 ARBLR 575

Hon'ble Judges : C.V. Ramulu, J

Bench : Single Bench

Advocate : C.V. Nagarjuna Reddy, in CRP Nos. 3722 and 3836 of 1999 and 2980 and 3035 of 2002 and G. Krishna Murthy, in CRP No. 3910 of 1999, for the Appellant; G. Krishna Murthy, for Respondent Nos. 1 to 3 in CRP Nos. 3722 and 3836 of 1999, N. Siva Reddy, in CRP No. 3910 of 1999 and T.V.S. Prabhakara Rao, for Respondent Nos. 11 and 12 in CRP Nos. 2980 and 3035 of 2002, for the Respondent

Judgement

C.V. Ramulu, J.—In all these civil revision petitions, common questions of law and facts arise for consideration; therefore, they are being disposed of together by this common order.

2. C.R.P. No. 3722 of 1999 is filed aggrieved by the order dated 29-6-1999 made in LA. No. 1094 of 1988 in O.S. No. 82 of 1998 on the file of the Senior Civil Judge, Ramachandrapuram, East Godavari District. Likewise, C.R.P. No. 3836 of 1999 is filed against the order dated 29-6-1999 made in LA. No. 1093 of 1998 in O.S. No. 82 of 1998, C.R.P. No. 3910 of 1999 is also filed against the order dated 29.6.1999 made in LA. No. 1093 of 1998 in O.S. No. 82 of 1998, C.R.P. No. 2980 of 2002 is filed against the order dated 29-6-1999 made in LA. No. 1092 of 1998 in O.S. No. 82 of 1998 and C.R.P. No. 3035 of 2002 is filed against the order dated 29-6-1999 made in LA. No. 1091 of 1998 in O.S. No. 82 of 1998.

3. Except C.R.P. No. 3910 of 1999, which was filed by Defendant Nos. 4, 5 and 8,

all other C.R.Ps. are filed by the plaintiff in the suit in O.S. No. 82 of 1998. For the sake of convenience, the parties hereinafter are referred to as they were arrayed in the suit.

4. The case of the plaintiff, in brief, is that the suit was laid against the defendants for dissolution of the partnership firm namely "Priyanka Poultry Farm" and for rendition of accounts. The said Priyanka Poultry Farm is a partnership concern consisting of 9 partners. Defendant Nos. 1 and 3 are the Managing and Executive Partners respectively. The said partnership firm was constituted and covered by a valid legal partnership deed dated 20-10-1988, and the same was subsequently amended by partnership deed dated 1-4-1992. It is the further case of the plaintiff that Defendant Nos. 1 and 3 are liable to pay dues to Defendant No. 9 from out of the partnership income and they were neither co-operating with the plaintiff nor rendering true and proper accounts of the business. They were also not repaying the loan amounts, which were obtained in the name of plaintiff and other partners due to Defendant No. 9. In fact the plaintiffs lands were pledged as security for the loans obtained by the firm from Defendant No. 9 and therefore, plaintiff sought dissolution of the partnership firm. The plaintiff also filed various I.As. seeking reliefs, such as, temporary injunction against the defendants from managing the affairs of the partnership firm etc., and they are pending.

5. Immediately after service of notice in the said suit, Defendant Nos. 1 and 10 filed LA. Nos. 1091 and 1092 of 1998 and Defendant Nos. 4, 5 and 8 filed I.A. Nos. 1093 and 1094 of 1998 u/s 8 of the Arbitration and Conciliation Act, 1986 (for short "Arbitration Act") seeking to stay the suit proceedings and also to refer the dispute raised in the suit to the Arbitrators in view of Clause 22 of the partnership deed contending that the amended partnership deed dated 1-4-1992 provides a comprehensive arbitration clause viz., "all the disputes and questions, interpretations arising out of the partnership deed, between the partners or between any one of them and their respective legal representatives during the continuation of partnership or thereafter shall be referred to arbitration of the arbitrators to be appointed by each party and in case of their disagreement to an umpire appointed by the said arbitrators, and in case of default by the parties whose decision shall be final, conclusive and binding upon the parties, their heirs, legal representatives and successors", and therefore, the civil Court has no jurisdiction to try the suit much less to adjudicate any questions raised therein and they have got to be adjudicated upon and decided by arbitrators chosen by the parties to the said partnership deed.

6. Whereas it is the case of the plaintiff that as a partner of M/s Priyanka Poultry Farm, under law, he got every right to approach the Civil Court for dissolution of the partnership firm and for other remedies. The plea that the proceedings have to be stayed until separate application is filed is not tenable. The defendant cannot stall the proceedings by stating that they would file such an application at their convenience. The petition filed is not at all maintainable and is liable to be

dismissed in limini. The partnership firm was formed on 20-10-1988 by a valid partnership deed and subsequently on M-1992 the partnership deed was amended keeping the same terms excepting minor changes. The partnership is not terminable/dissolved at will and according to the terms of partnership deed, any action regarding the suit shall be only through process of Court u/s 44 of the Indian Partnership Act, 1932. Though there is an arbitration clause mentioned in the partnership deed, still the jurisdiction of the Court is not ousted, since complicated questions of facts are involved in the suit. There is no need to refer the matter to Arbitrators and the Civil Court has got jurisdiction to entertain the suit and proceed with the trial. Insofar as the dissolution of the partnership firm is concerned, in view of Clause 17 of the partnership deed, the Arbitrators cannot decide the matter. Clause 22 of the partnership deed dated 1-4-1992 does not empower the partners to nominate Arbitrators for the purpose of dissolution and rendition of accounts. There is no specific clause in the partnership deed that partners can appoint Arbitrators for dissolution of the firm and for rendition of accounts. In the absence of specific bar in Clause 22, and in view of Clause 17, the question as to dissolution of the firm cannot be a subject-matter of arbitral proceedings.

7. However, after hearing the parties and considering the arguments at length, the trial Court allowed LA. Nos. 1091 and 1093 of 1998 partly and stayed the proceedings in O.S. No. 82 of 1998 and LA. Nos. 1092 and 1094 of 1998 were also allowed holding that both parties, excluding Defendant No. 9, shall refer the matter to arbitration, so as to enable them to resort to arbitration proceedings for adjudication of all disputes raised by the plaintiff in the suit subject to Section 9 of the Arbitration Act. The partners were directed to furnish the particulars of their respective Arbitrators on or before 12-7-1999 for the purpose of making the reference to them to submit their awards. Aggrieved by the said order, the present C.R.Ps. are filed as noticed above.

8. The learned Counsel for revision petitioner in C.R.P. Nos. 3722/99, 3836/99, 2980/02 and 3035/02 Sri C.V. Nagarjuna Reddy, strenuously contended that in a suit like this, the question of entertaining petition u/s 8 of the Arbitration Act does not arise in the teeth of the terms and conditions of partnership deed dated 1-4-1992. Under Clause 17 of the said partnership deed, no partner shall be entitled to claim dissolution of the partnership firm nor he is entitled to move any Court of law for the purpose of dissolution unless it is agreed by the partner(s) in writing. The Arbitrators are supposed to adjudicate the dispute if any arises between the parties as per arbitration clause and they cannot go beyond the terms of partnership and take up the dispute, which does not lie within their realm. Clause 22 of the partnership deed has no relevance for the purpose of dispute as to dissolution of partnership firm. The learned Counsel further submitted that since Clause 17 completely prohibits any claim as to dissolution of partnership firm and a partner is not entitled to move any Court of law for this purpose, except when agreed by the partners in writing. Therefore, the claim of dissolution, as is made, in the suit cannot be entertained by the Arbitrators since

the Arbitrators are supposed to resolve the dispute which can be claimed by the parties and which is permissible under the deed of partnership itself. The dispute, which is not permissible to be raised by the partners under Clause 17 cannot be allowed to be determined by the Arbitrators in the guise of Clause 22. Further, the learned Counsel also drawn the attention of this Court to Section 44 of the Indian Partnership Act and submitted that in spite of there being a negative recital as to claiming dissolution, since complicated questions of law and facts are involved in this case including dissolution of partnership firm, the suit is maintainable.

9. Per contra, the learned Counsel for respondents and revision petitioners in C.R.P. No. 3910 of 1999, contended that in the teeth of Clause 22, any embargo put on a partner saying that he shall not be entitled to claim dissolution of partnership nor shall be entitled to move any Court of law for the purpose of dissolution unless it is agreed by the partner(s) in writing will not come in the way of arbitrator in deciding even the claim of dissolution of partnership, since it is one of the disputes between the partners. The learned Counsel also contended that in view of the language imported into Clause 22 i.e., "the disputes and questions, interpretations arising out of partnership or this deed between parties", and the language employed in Clause 17 prohibiting the claim of dissolution of partnership would render nugatory, rather redundant. Therefore, the Arbitrators have all the power under Clause 22 to decide as to whether any dispute or questions or interpretation arising out of partnership or the very deed can be gone into including whether any partner is entitled to claim dissolution of partnership or not in view of Clause 17 of the deed. In support of his contention, the learned Counsel relied on the judgments reported in *Shree Subhlaxmi Fabrics Pvt. Ltd. Vs. Chand Mal Baradia and Others*, , *M/s. V.H. Patel and Company and Others Vs. Hirubhai Himabhai Patel and Others*, , *Rajasthan State Mines and Minerals Limited Vs. Eastern Engineering Enterprises and Another*, , *Associated Engineering Co. Vs. Government of Andhra Pradesh and another*, , *Asokan, Managing Partner, Karthiyani Oil Mills and Others Vs. Jayan*, and *M/s. Sundaram Finance Ltd. Vs. M/s. NEPC India Ltd.*, .

10. I have given my earnest consideration to the submissions made on either side and perused the order of the trial Court and others material made available on record.

11. Before going into merits, it is necessary to notice Clauses 17, 18, 22 and 23 of partnership deed dated 1-4-1992, which reads as under:

17. If any partner wishes to retire from the partnership, or she shall give three months prior notice in writing to the other partners. The share of the outgoing partner/partners shall be taken over by the continuing partner/partners only. In case the continuing partner/partners refuse to take such share or shares, then the outgoing partner/partners shall be at liberty to transfer the same to outsiders. No partner hereto shall be entitled to claim dissolution of this partnership nor shall be entitled to move any Court of law for the purpose of

dissolution unless it is agreed by the partners in writing.

18. Retirement, insolvency or death of any partner shall not have the effect of dissolving the partnership.

22. All the disputes and questions, interpretations arising out of the partnership or this deed between the partner or between any one of them and the legal representatives of other or to others between their respective legal representatives during the constitution of partnership or thereafter shall be referred to the arbitration of the arbitrators to be appointed by each party and in case of their disagreement to an umpire appointed by the said arbitrators and in case of default by the parties whose decision shall be final, conclusive and binding upon the parties, their heirs, legal representatives and successors.

23. In all the matters not specifically provided for in this deed, the provisions of Indian Partnership Act, 1932 for the time being in force shall apply.

12. It is also necessary to notice Sections 8, 11 and 16 of the Arbitration and Conciliation Act, 1996 as well as Section 44 of the Indian Partnership Act, 1932. Sections 8, 11 and 16 of the Arbitration Act reads as under:

Section 8: Power to refer parties to arbitration where there is an arbitration agreement:-(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in Sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under Sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

Section 11: Appointment of Arbitrators:

(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(2) Subject to Sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in Sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(4) If the appointment procedure in Sub-section (3) applies and,

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a

request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(5) Failing any agreement referred to in Sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(6) Where, under an appointment procedure agreed upon by the parties,

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7) A decision on a matter entrusted by Sub-section (4) or Sub-section (5) or Sub-section (6) to the Chief Justice or the person or institution designated by him is final.

(8) The Chief Justice or the person or institution designated by him, in appointing an arbitrator, shall have due regard to,

(a) any qualifications required of the arbitrator by the agreement of the parties; and

(b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

(10) The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by Sub-section (4) or Sub-section (5) to him.

(11) Where more than one request has been made under Sub-section (4) or Sub-section (5) or Sub-section (6) to the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on

the request.

(12) (a) Where the matters referred to in Sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the Principal Civil Court referred to in. Clause (c) of Sub-section (1) of Section 2 is situate and, where the High Court itself is the Court referred to in that clause, to the Chief Justice of that High Court.

Section 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 the 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; 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.

Section 44 of the Indian Partnership Act, reads as under:

Section 44: Dissolution by the Court:-At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:

(a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;

(c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;

(d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;

(e) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of Rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner;

(f) that the business of the firm cannot be carried on save at a loss; or

(g) on any other ground which renders it just and equitable that the firm should be dissolved.

13. From a reading of the above, it can be seen that there is no ambiguity as to the prohibition of a partner claiming dissolution of partnership or entitling him to move any Court of law for the purpose of dissolution. Once a partner is not entitled to claim dissolution of partnership, nor he can move any Court of law in this regard, as per Clause 17, it is difficult to accept the contention of the learned Counsel for respondents that all the disputes and questions, interpretations arising out of a partnership including entitlement to claim dissolution by a partner can be gone into, cannot be countenanced. The language imported into Clause 17 is very specific and unambiguous and Clause 18 would further strengthen the same i.e., in any circumstance dissolution of partnership shall not be given effect to. Therefore, the protection under the above clauses is to keep the partnership alive under any circumstance is clear. Thus, any dispute other than dissolution of partnership can be referred to Arbitrators as contemplated under Clause 22 of the Partnership Deed.

14. What is to be seen is as to whether the terms of the partnership deed would permit the Arbitrators to resolve the dispute as to the claim of dissolution of partnership firm. Thus, the powers of the Arbitrators need to be examined. There is no dispute as to the powers of the Arbitrator. As far as the power of arbitrator to dissolve the partnership is concerned, the law is clear that where there is a clause in the articles of partnership or agreement or order referring all the matters in difference between the partners to arbitration, the arbitrator has power to decide whether or not the partnership shall be dissolved and to award its dissolution. The power of arbitrator will primarily depend upon the arbitration clause and the terms of partnership. If under the terms of reference, all disputes and differences arising between the parties have been referred to arbitration, the

arbitrator will, in general, be able to deal with all matters, including dissolution. There is no principle of law or any provision, which bars an arbitrator from examining such a question. But the question arises, when there is a specific bar as to the claim of dissolution as contemplated under the deed, whether, such jurisdiction can be assumed by the Arbitrator and he can pass award of dissolution of partnership or a Civil Court can refer the matter to the Arbitrator in the guise of Clause 22 of the Partnership Deed. In the present case, once there is a prohibition under Clause 17, the Arbitrators have no power to decide as to the very claim of dissolution and it has to be seen whether the Arbitrator assumes such jurisdiction, though such a matter is referred by the Civil Courts as per Section 8 of the Arbitration Act.

15. The judgments relied upon by the learned Counsel for respondents/defendants have no relevance to the facts of the present case. Not one single case is cited which has a direct bearing on the present proposition of law i.e., whether the Arbitrator can go into a dispute which is not permitted to be raised under the terms of the partnership deed.

16. In *Shree Subhlaxmi Fabrics Pvt., Ltd.* 's case (supra), the dispute therein was with regard to jurisdiction of arbitral tribunal as there was no arbitration agreement between the parties as to how to deal with a situation when the cause of action had arisen at different places. There was no negative clause prohibiting jurisdiction of another Court where cause of action arose. Therefore, it was held that by making general remarks that the plaintiff has arguable case and that he did not consciously agree to exclusion of jurisdiction of Court was not proper, since the Arbitral Tribunal is empowered to decide its jurisdiction u/s 16.

17. In *V.H. Patel and Company and others*'s case (supra), the powers of Arbitrator were discussed as per clause of partnership deed or agreement or order referring the matter to arbitration. The relevant part of the consent terms read: "Both the parties agree that disputes relating to the rights and obligations of the parties arising out of the agreement dated 3-7-1987 and retirement deed dated 1-8-1987 and to the user of the trademarks in question and determination of the rights of Respondent No. 1 as a partner of the petitioner firm as per the pleadings of the parties in" the suits for declaration and for injunction be referred to arbitration. Therein, the partnership deed also contained an arbitration clause in respect of all disputes and questions in connection with the partnership being referred to Arbitrator.

18. In the case of *Rajasthan State Mines and Minerals Ltd.* 's case (supra), it was held that the Arbitrator is a creature of the contract between the parties and hence if he ignores the specific terms of the contract, it would be a question of jurisdictional error, which could be corrected by the Court. For that limited purpose, the agreement required to be considered. In order to decide whether arbitrator has exceeded his jurisdiction, reference to the terms of the contract is a must. While examining the clause of the agreement, it was noticed that it is apparent that the Arbitrator has exceeded his jurisdiction by ignoring the specific

stipulations in the agreement, which prohibited entertaining claims made by the contractor. In fact it is nowhere indicated that the Arbitrator was empowered to adjudicate any claims beyond the agreement between the parties. Therefore, the above three judgments relied upon are inapplicable to the case on hand.

19. In the judgment of Associated Engineering Co. 's case (supra), wherein it was held that the Arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. His authority is derived from the contract and is governed by the Arbitration Act, which embodies principles derived from a specialized branch of the law of agency. If he has remained inside the parameters of the contract and has construed the provisions of the contract, his award cannot be interfered with unless he has given reasons for the award disclosing any error apparent on the face of it. Whereas, in the case on hand, in the teeth of negative recitals in Clause 17 of the partnership deed, the powers vested in the Arbitrator under Clause 22 cannot empower him even to decide as to claim of dissolution by any of the partners. Insofar as resolving of dispute as to claim of dissolution of partnership deed, no one is empowered to do so, therefore, the same is not within the realm of the Arbitrator as to the claims regarding dissolution of partnership.

20. In the case of Asokan, Managing Partner, Karthiyani Oil Mills and others's case (supra), in fact it was held that there cannot be any a dichotomy with reference to the constitution of the partnership on one hand and the disputes arising under the terms of partnership on the other. Partnership agreement is a consolidated contract defining the constitution as well as the functioning of the partnership. Therefore, the Court could not have refused to refer the dispute on the ground that a clause in the partnership deed applies only to disputes connected with partnership or interpretation of partnership document. The facts of that case are altogether different. There was no clause, such as Clause 17, as in the present case, completely prohibiting, the claim of dissolution by any of the partners.

21. The judgment in M/s Sundaram Finance Ltd. 's case (supra), is a case where a comparative study was made as to the provisions of old Act vis-a-vis new Act.

22. All the above judgments in fact categorically indicate that the powers of Arbitrator flow from the terms of partnership deed and not otherwise. The Court also cannot empower the Arbitrator to decide a particular issue, which is not within the realm of the Arbitrator and prohibited by the partnership deed. There cannot be any a dichotomy in reference to the constitution of the partnership on the one hand and the disputes arising under the terms of partnership on the other. Partnership agreement is a consolidated contact defining the constitution as well as the functioning of the partnership. Merely because Clause 22 of the partnership deed provides an arbitration clause and also referring all disputes for the decision of the Arbitrator does not mean that any prohibition imposed on the partners by the terms of partnership deed can also be gone into by the Arbitrator

and the Arbitrator is empowered to resolve the said issue. In the case on hand, under Clause 17, a partner is prohibited from claiming dissolution of the partnership firm and also prohibited from moving a Court of law for the purpose of dissolution of the partnership firm. Therefore, referring the matter, which is prohibited under Clause 17 to an Arbitrator purported to be under Clause 22 of the partnership deed, is nothing but creating a dichotomy in the clauses of the partnership deed. One clause permitting/empowering the Arbitrator to resolve dispute and the other specifically prohibiting such a claim being made by any of the parties to the partnership deed does not create any dichotomy. On the other hand, the line is drawn so clearly that Clause 22 cannot be read in isolation of Clause 17 of the partnership deed. In the teeth of complete prohibition of a claim for dissolution of partnership, such a dispute as to the claim of dissolution before a Civil Court could not have been referred to the Arbitrator. The purport of arbitration Clause 22 cannot ignore the existence of recitals in Clause 17. Thus, the powers of Arbitrator are only to resolve the dispute, which are permitted within the four corners of the partnership deed and not a dispute specifically prohibited to be raised by a partner.

23. May be in a given case, where there is no prohibition of deciding the claim of dissolution, unlike in the present case, the Civil Court may refer the matter to the Arbitrators for their decision as per the terms of the agreement. In the absence of any specific clause, such as Clause 17, it is always open for the Civil Court to refer even the dispute as to dissolution of partnership. This power of the Arbitrator will primarily depend upon the arbitration clause and the reference made by the Court to it. In a given case, there may not be any clause empowering the Arbitrator to deal with dissolution in specific terms, still the Arbitrator can decide the matter if it is referred by the Court or by the parties themselves, but not a case of the nature of the present one.

24. The Arbitrator will, in general, be able to deal with all matters, including dissolution. There is no principle of law or any provision, which bars an arbitrator to examine such a question, unless it is specifically and categorically prohibited under the partnership deed. One may say that it is only the claim of partners as to dissolution is prohibited and not referring the matter to Arbitrator. What cannot be claimed and prohibited under the partnership deed also cannot be a subject-matter of arbitral proceedings, even if it is referred by the Court. The power exercised by an Arbitrator is within the four comers of the terms of agreement. Since, as noticed above, Clause 17 itself prohibits claiming dissolution by a partner, the partner cannot be asked to surrender to the Arbitrator and ask the Arbitrator to decide his claim as to dissolution.

25. In view of the above discussion, the contention of the learned Counsel for respondents that the powers of the Arbitrator are wide and he can decide the dispute as to the claim of dissolution and it is always open for the plaintiff to raise objection as to the jurisdiction of the Arbitrator, which can be decided u/s 16 of the Act, in the facts and circumstances of this case cannot be accepted.

26. For all the above reasons, the impugned order passed against the plaintiff is liable to be set aside.

27. In the result, the CRP Nos. 3722/99, 3836/99, 2980/02 and 3035/02 filed by the revision petitioner/plaintiff are allowed. The CRP No. 3910/99 filed by Respondents/Defendants Nos. 4, 5 and 8 is dismissed. No order as to costs.