IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION (L) NO. 33371 OF 2024
WITH
INTERIM APPLICATION (L) NO. 33925 OF 2024
IN
COMMERCIAL ARBITRATION PETITION (L) NO. 33371 OF 2024

1) Sandeep Dixit]
Indian Inhabitant, aged 57 years, residing at]
56, Rigved CHS, 344, Veer Sawarkar Marg,]
Dadar West, Mumbai – 400 028.]
] **...Applicant/ Petitioner**

Versus

1) Rekha Dixit]
Indian Inhabitant, aged 53 years, residing at]
802, Raheja Princess, S.K. Bole Road,]
Prabhadevi, Mumbai – 400 028]

2) Smruti Dixit]
Indian Inhabitant, aged 25 years, residing at]
802, Raheja Princess, S.K. Bole Road,]
Prabhadevi, Mumbai – 400 028]

3) Sneha Dixit]
Indian Inhabitant, aged 22 years, residing at]
802, Raheja Princess, S.K. Bole Road,]
Prabhadevi, Mumbai – 400 028]

4) Suchitra Dixit]
Indian Inhabitant, aged 80 years, residing at]
Shakti Niwas, Sir Bhalchandra Road, 179]
Hindu Colony, Dadar, Mumbai – 400 014] **...Respondents**

Mr. Ashish Kamat senior counsel a/w Mr. Mohit Khanna, Ms. Sayli Shinde i/b M/s Kartikeya & Associates, for the Petitioner.
Ms. Nishtha Garg i/b Mr. Abhishek Adke, for the Respondent No. 1.

CORAM : SHARMILA U. DESHMUKH
RESERVED ON : JULY 3, 2026
PRONOUNCED ON : AUGUST 4, 2026

JUDGMENT:

1. By this Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short '**Arbitration Act**'), the challenge is to the Award dated 30th July, 2024 passed by the Learned Sole Arbitrator declaring that the Respondent No 1 stands retired from the partnership firm w.e.f 2nd March, 2023 and entitled to 20% share in profits of the firm as on 20th September, 2022. The Award directs the Petitioner and Respondent Nos 2 to 4 to jointly and severally to pay to the Respondent No 1 the principal amount of Rs. 5 Crores along with interest at the rate of 9% per annum from 1st August, 2022 till payment or realization. The Petitioner is the husband of Respondent No. 1, the Respondent Nos. 2 and 3 are their children and Respondent No. 4 is the mother of the Petitioner.

2. The arbitration was invoked for declaration of dissolution of the firm and alternatively for declaration that the Respondent No 1 has retired from the firm, for share in profits and for monetary claim of Rs 5,00,00,000/- alongwith interest @ 9% p.a. from 1st August, 2022.

3. The statement of claim (**"SOC"**) pleads that the partnership between the Petitioner and the Respondents was "At Will". The Respondent No 1 was admitted to the partnership firm by amendment deed of 19th August, 2021 with the capital contribution of Rs 25,000/. As per Clause 23 of the amended partnership deed, the capital

contribution carried simple interest not exceeding 12% p.a. The Respondent No 1 advanced a loan of Rs. 5 crores on 6th September, 2021 to the firm, and as per clause 23 of the partnership deed, was repayable with simple interest at a rate not exceeding 12% per annum. Accordingly, interest at the rate of 9% per annum was regularly paid to the Respondent No 1 for the period from October 2021 to July 2022 by way of Rs. 2,50,000/- towards interest after deducting the requisite taxes, however, post July 2022 there was a deliberate default in payment of interest on the loan amount.

4. Due to serious matrimonial dispute, the Petitioner left the matrimonial house in or around 17th July, 2022 and stopped paying interest. In pursuance of clause 16 of the partnership deed read with the provisions of Indian Partnership Act, 1932 (for short '**Partnership Act**'), the Respondent No 1 addressed dissolution notice dated 20th September, 2022 dissolving the firm with effect from 20th September, 2022 and recalled the loan amount alongwith interest.

5. A legal notice invoking arbitration as per clause 18 of the partnership deed was issued on 28th September, 2022 proposing names of various persons to be appointed as sole arbitrator. As there was no response, Section 11 application was filed. The Respondent No 1 also filed a Petition under Section 9 of the Arbitration Act, and in Section 9 Petition, the Hon'ble High Court held that there was no denial that an

amount of Rs. 5 crores was lent by the Respondent No 1 to the firm and the Petitioner gave an undertaking to deposit the sum of Rs 5 Crores, which has been deposited. The Learned Arbitrator came to be appointed by the Hon'ble High Court vide order dated 23rd December, 2022.

6. In paragraph 7 of the SOC, the alternate pleading is that in event the Hon'ble Tribunal comes to a conclusion that the firm does not stand dissolved, then Award be passed declaring that the Respondent No 1 stands retired from the firm with effect from 20th September, 2022, and the present SOC be treated as a retirement notice of the Respondent No 1, entitling the Respondent No 1 to share in profits of the firm as on 20th September, 2022.

7. The statement of defense(SOD) pleaded that the partnership is not "At Will". There is no agreement in the amended partnership deed about the alleged loan and its repayment and rate of interest. It was contended that the Respondent No 1 never earned the amount of Rs. 5 crores, and the entire amount is of Petitioner. The Respondent No 1 has no right to recall the loan in the absence of any agreement showing the term for which the loan was advanced, mode of repayment or interest. It was contended that the alleged notice of dissolution is null and void and there is no dissolution. Consequently, the Respondent No 1 is not entitled to 20% share in profits of the firm. In response to paragraph 7

of the SOC, it was stated that as the process was not followed, the retirement of the Respondent No 1 is not possible. Alternatively, it was pleaded that in the event, the Respondent No 1 is getting retired, then the Petitioner is ready and willing to are ready and willing to give her capital and profit earned from her entry in the firm till 20th September, 2022 as demanded.

8. During the hearing, the Respondent No 1 did not press for prayer clause A seeking dissolution of the firm w.e.f 20th September, 2022 and restricted the relief to the alternate prayer of retirement as partner.

9. By the impugned Award, the Learned Arbitrator considered the submission on behalf of Petitioner seeking dismissal of the entire claim in view of withdrawal of claim of dissolution. It noted that disputes pertaining to other issues survive despite withdrawal of claim of dissolution and rejected the contention of termination of arbitral proceedings. Dealing with the alternate prayer of retirement, it noted the pleading in paragraph 7 of statement of claim that the statement of claim be treated as retirement notice and the evidence was also led on this aspect. It held that even if a formal notice of retirement as contemplated under clause 26 of the partnership deed is not given, the statement of claim can be treated as retirement notice under clause 26 of the partnership deed, and the Respondent No 1 can retire from the firm as provided in Section 32(1)(b) of the Partnership Act. By treating

the SOC as notice of retirement, the date of retirement was fixed on expiry of one month from filing of SOC i.e. 2nd March, 2023 and granted 20% share in profits of the firm.

10. The Learned Arbitrator assessed the evidence to hold that the Petitioner has not proved that the sum of Rs 5 Crores belongs to the Petitioner and held that Respondent No 1 has proved that she has advanced a loan of Rs. 5 crores to the firm.

11. On the aspect of default in payment of interest and repayment of loan with interest, the Learned Arbitrator assessed the evidence to hold that there is no material inconsistency in the Respondent No 1's evidence about the payment of interest on the loan amount. It held that the Respondent No 1 has premised her claim on the whatsapp message exchanged between the parties on 16th June, 2021 and 10th December, 2021 and held that the messages constitute a contract in respect of payment of interest @9% p.a. in furtherance whereof Rs 2.5 lakhs per month was paid till July, 2022. The Learned Arbitrator held that the payment of Rs 2.5 lakhs per month to the Respondent No 1 by the firm was towards interest on the loan amount of Rs. 5 crores, which may have been utilized by the Respondent No 1 to meet household expenses, however, the same does not change the nature of the payment. It held that the Respondents have failed to repay the principal loan amount and interest and are liable to repay the principal loan

amount along with interest and answered the issues in favor of the Respondent No 1.

12. Mr. Kamat, learned Senior Advocate for the Petitioner would submit that considering the relationship between the parties and the constitution of the firm, which was for the benefit of the family and for providing for the expenses of the entire family, the Respondent No 1 was admitted as partner, and an amount of Rs. 5 crores were transferred to the firm in the form of loan for accounting purposes.

13. He submits that once the notice of dissolution has been invoked, the same cannot then be converted into a notice of retirement, and being aware of the same, the SOC pleads that the SOC be treated as notice of retirement, which has been accepted by the Learned Arbitrator, contrary to clause 26 of the partnership deed dated 1st April, 2021. He submits that the Respondent No 1 is not entitled to the declarative relief of retirement since other consequential relief provided in clause 26 have admittedly not been sought.

14. He submits that the whatsapp message was in fact working for the proposed loan to be advanced to the firm and certain interest calculations at the rate of 9% per annum, which was sufficient for meeting the household expenses. He submits that the partnership deed does not make any provision for payment of interest on loan amount and points out to the relevant clause of the amended partnership deed

dated 19th August, 2021. He submits that neither the partnership deed nor the amended deed provides for any of the essential conditions of loan, and in the cross-examination the Respondent No 1 has offered a vague explanation that she was orally informed that the loan amount would be refunded in full when she retires from the firm and the only clause pertaining to interest payment is clause 23 of the partnership deed.

15. He would further submit that documents of the firm were produced on record to show that the sum of Rs. 2.50 lakhs was repayment of loan advanced. He submits that in any event, an interest at the rate of 9% on a sum of Rs. 5 crores would be annually Rs. 45 lakhs, which does not match with the figures given in the whatsapp message. He submits that even if the tax at 30% was agreed to be paid by the Petitioner, it would still amount to Rs. 2.62 lakhs per month post tax, which is still short of the figure of Rs. 2.50 lakhs per month. He submits that it is only after a matrimonial dispute arose between the parties that a claim has been raised by the Respondent No 1.

16. He submits that the Learned Arbitrator committed an error by construing loan repayment as payment of interest without any such clause in the partnership deed. He would point out to the cross-examination of the Respondent No 1, admitting that clause 23 of partnership deed pertains to interest on capital contribution. He would

further point out that in order to justify that interest was fixed at 9% per annum, Respondent No. 1 relies upon the working sent on whatsapp by Petitioner, which is not in consonance with clause 23 of the amended partnership deed. He would further point out that in the cross-examination, the Respondent No 1 has admitted that interest is to be paid at fixed percentage, contrary to her own case that interest was agreed to be paid only at 9% per annum. He would further point out that in the cross-examination, Respondent No. 1 has admitted that clause 6 of the amended deed does not specify that the interest payment was required to be paid on monthly basis. He would further point out that in the cross-examination, the Respondent No 1 has admitted that the repayments made in respect of the loans were with the intent of meeting the expenses of the family, which shows that the mechanism was devised to meet household expenses through loan repayments with an intent to maximize tax efficiency.

17. He submits that the Learned Arbitrator's finding that the whatsapp messages constitute a contract, was not the pleaded case of Respondent No. 1. He submits that the impugned award suffers from patent illegality and is contrary to the public policy. In support, he relies upon the following decisions:

(i) PSA Sical Terminals Pvt. Ltd. vs Board of Trustees of

V.O. Chidambranar Port Trust Tuticorin And Others[1].

(ii) Ramesh Kumar Jain vs Bharat Aluminum Company Ltd.[2]

(iii) Gayatri Balasamy vs ISG Novasoft Technologies Ltd.[3]

(iv) Shambhavi Co. op. Hsg. Society Ltd. vs Shrikrishna Talak, Major[4]

(v) Kirtikumar Fakrichand Mehta And Others vs Dilipkumar Jayantilal Sanghvi[5]

(vi) Jones vs Lloyd[6]

(vii) Vasantha (Dead) Through Legal Representative vs Rajalakshmi Alias Rajam (Dead) Through Legal Representatives[7]

(viii) Muni Lal vs Oriental Fire & General Insurance Co. Ltd. & Another[8]

(ix) Trojan and Company vs RM. N.N. Nagappa Chettiar[9]

(x) Mangala Waman Karandikar (Dead) Through Legal Representatives vs Prakash Damodar Ramade[10]

(xi) Indian Oil Corporation Limited vs Shree Ganesh

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1 (2023) 15 SCC 781
2 2025 SCC Online SC 2857
3 2025 SCC Online SC 986
4 2016 SCC Online Bom 4791
5 2013 SCC Online Guj 2942
6 [1874 J. 39.]
7 (2024) 5 SCC 282
8 (1996) 1 SCC 90
9 (1953) 1 SCC 456
10 (2021) 6 SCC 139

Petroleum Rajgurunagar[11]

(xii) State of Chhattisgarh And Another vs Sal Udyog Private Limited[12]

(xiii) Oil and Natural Gas Corporation Limited vs JSIW Infrastructure Private Limited[13]

18. *Per contra*, Ms. Garg, learned counsel for the Respondent No 1 would submit that at the stage of final hearing, the Respondent No 1 gave up the relief of dissolution of the firm and restricted her claim to retirement from the firm. She submits that the Learned Arbitrator rightly rejected the claim of Petitioner seeking termination of mandate under section 32(2)(a) of the Arbitration Act as the dispute between the parties was not restricted to the prayer of dissolution of the firm and were independent to the relief of dissolution. She points out that an alternate relief of retirement was sought which was elected by Respondent No 1 and rightly granted by the Learned Arbitrator. She submits that Petitioner cannot object to the dissolution of the firm, and compel the Respondent No 1 to continue as partner. She submits that the Learned Arbitrator rightly modified the date of retirement and held that the SOC be be treated as notice under clause 26 of the amended partnership deed, and therefore, held the Respondent No 1 entitled to 20% share in the profits as on 20th September, 2022. She submits that

11 (2022) 4 SCC 463
12 (2022) 2 SCC 275
13 2025 SCC Online Del 3811

the Respondent No 1 was entitled to seek alternate remedies unless they are mutually destructive. She submits that having objected to the dissolution in the SOD and by continuing the operations of the firm, the Petitioner is estopped from taking a contrary stand. She submits that there is no patent illegality as clause 26 entitles a partner to resign from the firm by giving one month's notice and there is no specific form of notice, and therefore, the pleading in paragraph 7 was rightly taken as notice of retirement.

19. She submits that the advancement of loan of Rs. 5 crores has been duly proved from the documentary evidence. She submits that the learned Arbitrator has considered the pleadings, the clauses of the amended partnership deed and the whatsapp message exchanged between the parties to constitute a contract and that the finding is based on evidence which cannot be interfered under Section 34 of the Arbitration Act. She submits that the Courts can consider extrinsic evidence to interpret the terms of the agreement in case of doubt and ambiguity which has been done by the Learned Arbitrator as the documents and the written correspondence relied upon does not in any manner contrary, vary, add or subtract from the terms of partnership deed or amended partnership deed. She submits that the partnership deed provided for a maximum of 12% interest to be made and the correspondence merely clarified the actual rate of interest which was

proposed. She submits that as the order is well-reasoned order and no ground has been made out to disturb the impugned Award within the contours of Section 34 of the Arbitration Act. In support, she relies upon the following decisions:

> ***(i) Vishnu Chandra vs Chandrika Prasad Agarwal And Others[14].***
>
> ***(ii) The Godhra Electricity Co. Ltd. vs The State of Gujarat And Another[15].***
>
> ***(iii) Roop Kumar vs Mohan Thedani[16].***

20. Rival contentions now fall for determination:

21. The submissions of Mr. Kamat are confined to the termination of mandate of the Arbitral Tribunal upon withdrawal of claim of dissolution of partnership firm and the direction for payment of interest on the loan of Rs. 5 Crores.

22. The arbitration agreement is contained in Clause 18 of the partnership deed, which reads as under:

> "18. That any consent or difference which may arise between the partner, or the legal heirs, successors or representatives with regard to the construction, meaning and effect to this deed, and/or any part thereof in respect of the accounts, profit or loss of the business of the said firm, or any other matter relating to the firm shall be referred to arbitration under the Indian Arbitration Act, 1940."

23. The reliefs sought by the Respondent No 1 were not confined only to the dissolution of the firm but further reliefs of share in profits

14 (1983) 1 SCC 22
15 (1975) 1 SCC 199
16 (2003) 6 SCC 595

of the sum and repayment of loan of Rs 5 Crores alongwith interest. Section 32 of the Arbitration Act governing the termination of proceedings sets out the eventualities in which the mandate of the Arbitral Tribunal stands terminated. Section 32(2)(a) provides that the Arbitral Tribunal shall issue an order of termination of arbitral proceedings, where the claimant withdraws his claim unless the Respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute. The statutory provision contemplates the termination of the mandate of arbitrator where the claim is withdrawn in its entirety, subject to the Respondent's objections seeking a final settlement of the dispute.

24. In the present case, the giving up of the substantive prayer of dissolution of firm and confining the relief to the alternative prayer along with the other claims which survived even post the withdrawal of the claim of dissolution, the mandate of the arbitral tribunal could not be said to have been terminated. The relief of refund of sum of Rs. 5 crores alongwith interest which was advanced by the Respondent No 1 to the firm was not contingent on the dissolution of the firm. The amended deed of partnership dated 19th August, 2021 contains a recital about the loan of Rs. 5 crores by Respondent No 1 to the partnership firm and does not link the repayment to the dissolution of the firm. In

event of any dispute concerning the said loan amount which arose out of the partnership deed, the same would be referable to arbitration under clause 18 of the partnership deed. As the other disputes were independent disputes which would survive the withdrawal fo the claim of dissolution of the firm, the mandate of Arbitral Tribunal was not terminated under Section 32(2)(a) of the Arbitration Act.

25. The Learned Sole Arbitrator has rightly held that notice of dissolution also calls upon the Respondents to comply with certain requisitions and, in particular, to pay the sum of Rs. 5,04,17,000/- which was the loan amount advanced by her to the firm along with interest thereof. It rightly noted the reliefs sought in the statement of claim, to hold that save and except prayer clause (c) which is linked to the notice of dissolution, none of the prayers flow from the relief of dissolution.

26. Mr. Kamat would submit that having sought the substantive prayer of dissolution of firm, the Learned Arbitrator could not have then granted the relief of retirement of the Respondent No 1 from the firm by considering the SOC as notice of retirement. In paragraph 7 of the SOC, it is pleaded that in event the Tribunal concludes that the firm does not stand dissolved, then it be declared that the Respondent No 1 stands retired from the firm with effect from 20th September, 2022. Clause 16 of the partnership deed provides that the partnership is at will and can be dissolved at any time with mutual consent of all the

parties to the deed. However, the managing partner can decide to dissolve the partnership at any time by giving all other partners notice of at least one month. Such notice should be sent by email or at the postal address. The period of one month shall be computed from which such notice is sent by the managing partner.

27. The agreement concerning retirement from the firm is contained in Clause 26 which reads as under:

> "That any of the partners can resign by giving one month's notice to the firm. The retiring partner cannot transfer his/her share to any outsider without the permission of all other existing partners.
>
> The retiring partner shall first offer his/her share to the existing partners, which will be taken over by the existing partners in equal ratio, unless existing partner/s shows their inability. Any such transactions can happen only at market value of the assets."

28. The term of the partnership deed whether for dissolution or for retirement, provides for a notice of at least one month to be given to the firm. Admittedly, in the present case, on 20th September, 2022, the Respondent No 1 had given notice of dissolution of the firm with immediate effect. The notice was given to the partnership firm as well as to all the partners of partnership firm. The SOC specifically averred that the SOC be treated as a retirement notice of the Respondent No 1 in support of the alternative prayer. The learned Arbitrator has accepted the SOC as retirement notice. It further noted the provisions of Section 32(1)(b) of the Partnership Act which permits the partner of the firm to retire in accordance with the express agreement by the partners and held that the express agreement would relate to Clause 26 of the

partnership deed.

29. Clause 26 of the partnership deed does not specify any procedure and only provides for the resignation of a partner by giving one month's notice to the firm. All the partners of the firm were parties to the arbitration proceedings, and as such, the SOC could be considered as notice of retirement. Clause 26 of the partnership deed only places an embargo on the transfer of the shares to outsider without permission of the existing partners and that the retiring partner shall first offer his/her share to the existing partner and is not a condition precedent to the notice of retirement. The Learned Arbitrator has interpreted Clause 26 of the partnership deed in the background of statutory provisions of Section 32(1)(b) of Partnership Act.

30. In the case of ***Vishnu Chandra vs Chandrika Prasad Agarwal And Others*** (supra), one of the issues before the Hon'ble Apex Court was whether the Plaintiff therein was entitled to retire from the partnership or for dissolution of the firm. In that case, the suit was filed for dissolution of the firm, which was granted by the trial court, was upheld by the first Appellate Court and reversed by the High Court. The issue agitated before the High Court was whether the partner was entitled to retirement or dissolution of the firm. The Hon'ble Apex Court noted the clauses in the partnership deed providing for retirement of partner and treated the dissolution notice as notice of retirement to permit the

partner to retire.

31. The facts of that case are similar to the facts in hand, as after giving notice of dissolution, the alternate prayer sought was for retirement of the partners. The partnership deed provides for retirement of the partner and the learned Arbitrator has accepted the SOC as notice of retirement and, in view of the retirement clause, held that the Respondent No 1 is entitled to declaration of retirement. For the purpose of retirement, it has taken the date of filing of the SOC as date of notice, and, has held that the Respondent No 1 has retired upon expiry of the period of one month.

32. In the SOD, the Petitioner has pleaded that if at all the Respondent No 1 is retiring, then the Petitioner is ready and willing to give her capital and profit all from her entry in the firm till 20th September, 2022 as demanded. It is well settled that a mere error of fact or law, does not warrant interference under Section 34 of Arbitration Act. It must be pointed out that the violation,if any, of substantive provision of law is fundamental to the policy of Indian law. The learned Arbitrator has considered the provisions of the Partnership Act and the pleadings as well as the documents and permitted the retirement of the Respondent No 1. The impugned Award to the extent that it treats the SOC as notice of retirement and permits the retirement of the Respondent No 1 after period of one month in

consonance with the clause in the partnership deed cannot to be said to suffer from patent illegality or against the fundamental policy of Indian Law.

33. Mr. Kamat has not assailed the finding of the Learned Arbitrator that the Respondent No 1 had advanced the loan of Rs 5 Crores to the firm, however, has questioned the grant of interest on the said loan. The pleading in the SOC is that the Respondent No 1 had advanced a loan of Rs. 5 crores on 6th September, 2021 to the firm and, as per amended Clause 23 of the partnership deed, the said loan amount was to be payable by the firm along with simple interest at the rate not exceeding 12% per annum, and accordingly, at the rate of 9% per annum, the interest was regularly paid to the Respondent No 1 from October 2021 to July 2022, by way of monthly sum of Rs. 2,50,000/- after deducting the requisite taxes.

34. The claim of the Respondent No 1 to the interest on the loan of Rs 5 Crores was premised on Clause 23 of the partnership deed. The amount of Rs. 5 crores was advanced on 6th September, 2021, and the recital in the amended deed of partnership dated 19th August, 2021 states that the new partner has committed to lend an initial amount of Rs. 5 crores to the partnership firm. Clause 23 of the unamended partnership deed of 1st April, 2021, when the Respondent No 1 was not a partner of the firm, provided as under:

> "That the capital required for the business of partnership shall be contributed time to time by the parties in such manner in all respect as may be agreed to between them. A simple interest at the rate of 12% per annum shall be payable by the firm to the parties."

35. Post admission of Respondent No 1 to the partnership firm, Clause 23 came to be amended to read as under:

> "That the capital required for business of partnership shall be contributed time to time by parties in such manner in all respect as may be agreed to between them. A simple interest as mutually agreed shall be payable by the firm to the parties but in any case not exceeding 12% per annum."

36. The partnership deed of 1st April, 2021 as well as the amended deed of partnership dated 19th August, 2021 provided for payment of interest on the capital contribution. The amended Clause 23 of the partnership deed after admission of the Respondent No 1 introduced a change by which the earlier simple interest at fixed rate of 12%p.a. was varied to provide for the maximum rate of interest payable at 12% on the capital contributions.

37. Paragraph 3.7 of the SOC pleads that in terms of the amended Clause 23 of partnership deed, the loan amount was payable by the firm alongwith simple interest at a rate not exceeding 12% p.a. and accordingly interest @ 9% p.a. of Rs 2,50,000/ was regularly paid to the Respondent No 1 from October, 2021 to July, 2022. The Respondent No 1 was correct in reading that Clause 23 provided for simple interest at a rate not exceeding 12% p.a. but misapplied the clause to the loan amount. Clause 23 is very precise and specific and applies only to capital

contributions and not loan advanced to the firm.

38. There is a contradiction in paragraph 3.5 and 3.7 and whereas clause 3.5 rightly pleads about payment of simple interest not exceeding 12% p.a. to the partner contributing capital for business of the firm, Clause 3.7 misapplies Clause 23 to the loan amount.

39. In the cross examination, the Respondent No 1 when questioned on the relevant clause of amended deed of partnership which prescribes that the alleged loan amount bears interest @ 9% p.a. has responded as under:

> "This was agreed orally and a working was sent on WhatsApp chat saying how the figures would look with the 9% interest on the loan amount."

40. In response to the question no 36, the Respondent No 1 stated that the oral discussion between the Petitioner and the Respondent No 1 were held in June, 2021.

41. In paragraph 178 and 183, the Learned Arbitrator holds as under:

> "178. At the outset, I must note that certain arguments have been advanced by the parties on the interpretation the partnership agreements and more particularly amended Clause 23 thereof. However, it is pertinent to note that the Claimant is not basing here case on clauses of the partnership deeds executed between the parties more importantly, the amended Clause 23 but is basing her case on the contract/agreement arrived at between the parties vide the aforesaid WhatsApp correspondence. If I were to hold that such correspondence does indeed constitute a contract/agreement between the parities in respect of payment of interest @ 9% p.a. on the loan amount of Rs 5 Crores, then I need not delver into questions on the interpretation of amended Clause 23.
> 183. In view of the above, I am of the view that the aforesaid WhatsApp correspondence exchanged between the parties on 16th June, 2021 (Exhibit C- 10) and on 10th December 2021, (Exhibit R-1) does constitute a contract/ agreement between the parties in respect of payment of interest @ 9% p.a. on the loan amount of Rs.5 Crores. The Respondents are bound by such correspondence exchanged between the Claimant and

> Respondent No 1. Having held that such correspondence constitutes a contract/agreement between the parties in respect of payment of interest @ 9% p.a. on the loan amount of Rs.5 Crores, I do not think it necessary to delve into the question of the interpretation of the partnership agreement and amended clause 23 thereof."

42. The foundation for grant of interest @ 9% p.a. on the loan amount is not the terms of the partnership deed under which the disputes came to be referred to arbitration. The learned Arbitrator has ignored the terms of the partnership deed, which did not provide for payment of interest on the loan amount and took into consideration the whatsapp message of 16th June, 2021 for grant of interest. It was not even the pleaded case of the Respondent No 1 that the whatsapp message of 16th June, 2021 constitutes a contract between the parties under which interest is claimed. The Respondent No 1 came with a specific case that Clause 23 of the partnership deed provided for payment of interest at a rate not exceeding 12% and accordingly, interest at the rate of 9% per annum was regularly paid to the claimant by paying the sum of Rs. 2,50,000/-. In the affidavit of evidence, the Respondent No 1 has deposed that in June 2021, a proposal was offered by Respondent No. 1 to induct her as a partner in the firm, and that a request was made to advance a sum of Rs. 5 crores to the firm and the firm would pay an interest amount equivalent to 9% per annum. A screenshot of the text message was tendered in evidence. The Respondent No 1 has not deposed that the whatsapp exchange between the parties constitutes a contract entered into between the

parties, and the deposition was in respect of offer made by the Petitioner.

43. The Respondent No 1 has further deposed in paragraph 9, that in terms of the amended Clause 23 of the partnership deed, the loan amount was payable by the firm along with simple interest at the rate not exceeding 12% per annum and that in view of agreement with Petitioner interest at the rate of 9% pre-tax per annum was regularly paid in her bank account by way of payment of Rs. 2,50,000/-. The Respondent No 1 in her evidence therefore maintained that the interest was payable by virtue of amended Clause 23 of the partnership deed. Without any case being pleaded by the Respondent No 1, the Learned Arbitrator has held that the whatsapp exchanges constitute a concluded contract for payment of interest @ 9% p.a. on the loan amount.

44. The Learned Arbitrator has ignored the balance sheets and income tax returns of the firm produced on record (Exhibit C-15 to C-18) which showed that the payment of Rs 2,50,000/ was loan repayment. Ignoring the documentary evidence of balance sheets and income tax returns, the Learned Arbitrator has held that the amount of Rs 2.5 Lakhs was paid towards interest on the loan amount.

45. By considering the whatsapp message as concluded contract the Learned Arbitrator has foisted a new contract upon the parties, which was not even the pleaded case of the Respondent No 1. The arbitrator is

the creature of the contract and was bound to consider the terms of the contract under which the dispute was referred to arbitration. The dispute was referred in context of the partnership agreement and the Learned Arbitrator has categorically held that it has not delved into the question of interpretation of the partnership agreement and amended Clause 23, which it was bound to do. It was not permissible for the Learned Arbitrator to ignore the terms of partnership deed when the reference arose from the partnership deed and create a new contract between the parties. The finding of entitlement of Respondent No 1 to interest @ 9% p.a. on the loan amount premised on the whatsapp exchanges suffers from patent illegality.(***See PSA Sical Terminals Pvt. Ltd. vs Board of Trustees of V.O. Chidambranar Port Trust Tuticorin And Others*** (supra).

46. In ***Ramesh Kumar Jain vs Bharat Aluminum Company Ltd.*** (supra), the Hon'ble Apex Court noted the decision of ***Associated Builders vs Delhi Development Authority And Another***[17] which had held that contravention of Section 28(3) of Arbitration Act which mandates the Arbitral Tribunal to decide the the case in accordance with the terms of the contract constitutes patent illegality. The learned Arbitrator has ignored the terms of the partnership deed of 19th August, 2021, that the loan which was advanced by the Respondent No 1 to the partnership firm was pursuant to the Respondent No 1's induction as partner. The

17 2015 (3) SCC 49

terms and conditions qua the loan were therefore governed by the terms of the partnership deed, which did not provide for payment of any interest on the loan.

47. The decisions of ***The Godhra Electricity Co. Ltd. vs The State of Gujarat And Another*** (supra) and ***Roop Kumar vs Mohan Thedani*** (supra), deal with the issue of exclusion of extrinsic evidence. The Learned Arbitrator in present case has negated the arguments of Petitioner on parole evidence of the ground that the case of the Respondent No 1 is not based on the clauses of the partnership deed. That being the foundation for grant of interest on the loan amount, the decisions cited would not assist the case of the Respondent No 1.

48. The impugned Award permits the retirement of the Respondent No 1 and grants her 20% share in the profits as on 20th September, 2022. The Learned Arbitrator has awarded the principal amount of Rs 5 Crores alongwith interest @ 9% p.a. The impugned Award to the extent that it grants interest @ 9% p.a. on the loan amount of Rs 5 Crores is severable from the rest of the Award. No submissions have been canvassed to assail the finding of the learned Arbitrator that the sum of Rs. 5 crores was advanced as loan by the Respondent No 1 to the firm. It is permissible in exercise of powers under Section 34 of Arbitration Act to retain the good part of the Award and quash and set aside the bad part, if the Award if severable. In the present case, in my view, the impugned

Award to the extent that it grant interest @ 9% p.a. on the loan amount of Rs 5 Crores can be severed from the good part of the Award.

49. In light of the above, the impugned Award dated 30th July, 2024 to the extent that it grants interest @ 9% p.a. on the sum of Rs. 5 crores, is clearly unsustainable and is hereby quashed and set aside. The rest of the Award remains undisturbed.

50. Interim Application does not survive for consideration and stands disposed of.

(SHARMILA U. DESHMUKH, J.)