IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

MISCELLANEOUS FIRST APPEAL NO. 2192 OF 2025 (AA)

BETWEEN:

1. M. MALLIKARJUNA
S/O SRI AMARAPPA
AGED 51 YEARS,
PROP M/S. SRISHAILA & CO

2. SMT. RAJESHWARI MALLIKARJUNA
W/O SRI M.MALLIKARJUNA
AGED ABOUT 46 YEARS

1 AND 2 HAVING AT
OFFICE ADDRESS:
M/S. SRISHAILA AND CO.,
DOOR NO.117/10/6A
RMC LINK ROAD
DAVANGERE - 577 001

FACTORY ADDRESS:
M/S. SRISHAILA AND CO.,
PLOT NO.74/75
KARUR INDUSTRIAL AREA
KIADB
DAVANGERE - 577 006

...APPELLANTS

(BY SRI LAKAMAPURMATH CHIDANANDAYYA, ADVOCATE)

AND:

1. SRI S.P. SRIDHARA
S/O SRI C. PANDURANGA
AGED ABOUT 51 YEARS

2. SRI S.P. MURALIDHAR
S/O SRI C. PANDURANGA
AGED ABOUT 53 YEARS

BOTH ARE RESIDING AT:
No.1987/1-2, MCC 'A' BLOCK
RAMALINGESHWARA NILAYA
DAVANGERE - 577 004

OFFICE ADDRESS:
M/S. MANIKESHWARI INDUSTRIES
DOOR NO.117/10/7A, RMC LINK ROAD
DAVANGERE - 577 001

...RESPONDENTS

(BY SRI JAYAKUMAR S. PATIL, SENIOR ADVOCATE A/W
SRI VARAPRASAD K., ADVOCATE)

THIS MFA IS FILED UNDER SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO SET ASIDE THE ORDER DATED 31.01.2025 PASSED BY PRINCIPAL DISTRICT AND SESSIONS JUDGE, DAVANAGERE IN A.P.NO.13/2022 AFFIRMING THE AWARD OF THE LEARNED ARBITRATOR IN A.C.No.147/2019 AND GRANT SUCH OTHER RELIEF OR RELIEFS.

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellants have filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**], impugning the judgment dated 31.01.2025 passed by the Principal District and Sessions Judge, Davanagere [**District Court**] in A.P.No.13/2022 [**impugned order**].

2. The said petition was filed by the appellants under Section 34 of the A&C Act seeking the setting aside of the Arbitration Award dated 17.06.2022 [**impugned award**] passed by an arbitral tribunal comprising of a sole arbitrator [**Arbitral Tribunal**].

3. The impugned award was rendered in the context of disputes that have allegedly arisen in respect of a partnership firm named M/s Srishaila and Co. [hereafter **the Firm**].

4. The parties had entered into a partnership deed dated 01.04.2012 [**the partnership deed**] for the constitution of the Firm. The said deed included an arbitration clause (arbitration agreement), which reads as under:

> "18. **Arbitration**: All disputes arising out of the partnership either during the continuance of the firm or afterwards between the partners or their legal representatives shall be referred to arbitration under the Arbitration and Conciliation Act, 1996 and the award shall be binding on all the partners or their legal representative or heirs."

5. The respondents who were claimants before the Arbitral Tribunal sought a reference of the disputes to arbitration. They filed a petition under Section 11 of the A&C Act [CMP.No.230/2015] for the constitution of an Arbitral Tribunal. This court allowed the said petition by an order dated 10.04.2019, and the Arbitral Tribunal was constituted.

6. The respondents filed their statement of claim, *inter alia,* claiming that directions be issued to the appellants to execute registered documents in respect of certain properties, which were referred to as Schedule B property under the terms of the settlement deed dated 10.09.2012 [**the settlement deed**]. The description of the properties described as Schedule B property in the settlement is as follows:

SCHEDULE 'B' PROPERTY

> 1. All the piece and parcel of the plot No.74 & 75, registered in the name of Srishaila & Co, formed by KIADB, carved out of Re. Survey number 16 & 17, measuring 9002 sq.mtr. situated at Karuru Industrial area, Davangere and bounded by

East: KIADB Road
West: Sy.No.17/2 property belongs to Srishaila education trust
North: Plot No.73
South: Private Property

2. All the piece and parcel of the Agricultural land in Resurvey Number 24/3 registered in the name of Sri. M.Mallikarjuna measuring 20 Guntas situated at Doddabathi Village, Kasaba Hobli, Davangere Taluk & District, and bounded by

East: Remaining Land in Sy.No.24/3 of Danesh @ Danappa
West: Mallikarjun's Land
North: Maheshwarappa's Land
South: Road

3. All the piece and parcel of the Agricultural land in Resurvey Number 114/5 registered in the name of Sri. M.Mallikarjuna measuring 15 Guntas, situated at Beturu Road, Beturu Village, Davangere, Davangere Taluk & District, and bounded by

East: Land of Basavaraj & Vishwanath
West: Road in the same Sy.No.
North: M.Basavaraj's Land in Sy. No.114/5
South: Road

4. All the piece and parcel of Go down No.C-2, in Survey Number 49/2, in the name of Sri. M.Mallikarjuna, measuring 1476.05 sq.ft. situated at Ward No.4, 6th Davison, A.P.M.C. Lingeshwara Temple Road, Davangere and bounded by

East: Go down No.C-1 of S.P. Sridhar
West: Property of Sri. Rudragowda S Gowdar
North: Lingeshwara Temple Road
South: Drainage

7. The Arbitral Tribunal allowed the said claim in terms of the impugned award, the operative part of which reads as under:

"AWARD

I. The first claimant is entitled to half of the property, bearing plot No.s 74 & 75 in Karur Industrial Area, formed by KIADB, which is item No.2 in the claim-Schedule A Property and item No.1 in the claim-Schedule B Property. The claimant No.1 shall clear his share of the loans, in respect of the said plots, if any, within two months from today. Within two months thereafter, the respondents shall execute the sale deed in respect of half of the said plots in favour of the claimant No. 1.

II. No order as to cost.

III. The stamp duty is payable as per Karnataka Stamp Act, 1957.

8. As is apparent from the above, the Arbitral Tribunal found that respondent No.1 (who was claimant No.1 before the Arbitral Tribunal) is entitled to one-half of the property bearing Plot No.74 and 75 in Karur Industrial Area, which was described as Item No.1 in the Schedule B property [hereafter '**the subject property'**].

9. It is the appellants' case that the subject property did not belong to the Firm and, therefore, any claim regarding the same did not fall within the scope of the arbitration clause in the partnership deed.

10. The Arbitral Tribunal found that the Firm had come into existence but the date on which it was formed was uncertain. The

Arbitral Tribunal also held that the appellants had failed to prove that the respondents were not the constituent partners of the Firm.

11. However, the Arbitral Tribunal relied on the settlement deed and noted that the parties had agreed that the subject property was purchased with the Firm's funds. Thus, appellant No.1 and respondent No.1, who were respondent No.1 and claimant No.1 respectively, before the Arbitral Tribunal, would have rights in the subject property.

12. On the aforesaid basis, the Arbitral Tribunal directed that respondent No.1 should clear his share of loans in respect of the subject property and directed that within two months thereafter, the appellants execute a sale deed in respect of that property in favour of respondent No.1.

13. Apart from disputing the claims made on merits, the appellants also raised a preliminary objection with regard to the maintainability of the arbitral claims. They claimed that the partnership deed was executed on 01.04.2012 and the Firm came into effect from 01.04.2012. The arbitration agreement was thus confined to the disputes raised in respect of the said deed. However, the respondents had raised a claim in respect of the

settlement deed executed on 10.09.2012 [**the settlement deed**]. The appellants claimed the settlement deed related to a firm named M/s. Manikeshwari Industries and not the Firm (M/s. Srishaila & Co.). They also contended that the partnership deed was not acted upon; the Firm did not come into existence; and no business was carried on by the Firm. They claimed that disputes arose among the Firm's constituent partners immediately after the execution of the partnership deed, and the partners had decided not to carry on any business under the said partnership. They claimed that no bank account in the Firm's name was opened and the Firm did not conduct any business.

14. The Arbitral Tribunal rejected the preliminary objections in terms of an order dated 28.01.2020. The Arbitral Tribunal held that these objections could not be considered under Section 16 of the A&C Act.

15. The appellants' case is canvassed mainly on two fronts. First, the claim in respect of the subject property neither arises from the partnership deed nor relates to the Firm. Therefore, such a claim is not arbitrable under the arbitration agreement – clause 18 of the partnership deed. Second, the impugned award is manifestly erroneous.

16. Before proceeding to address the question of whether the claim made by the respondents fell within the scope of the arbitration clause, it would be relevant to refer to the statement of claims filed by the respondents before the Arbitral Tribunal.

<u>The Dispute</u>

17. The respondents claim that the appellants were carrying on the business of gunny and plastic bags in the name of M/s. Shrishila and Co., a proprietorship concern, with its office at No.117/10/6A, RMC Link Road, Davanagere. The parties were carrying on the business under a partnership firm named M/s. Manikeshwari Industries since 2006.

18. The respondents claim that appellant No.1 was facing a financial crunch in his sole proprietorship concern. Therefore, to improve the business, the appellants invited the respondents to become partners in the said business, which was run as a proprietorship concern. The respondents agreed to become partners in the Firm.

19. Appellant No.2 also joined as a constituent partner of the Firm. It is the respondents' claim that M/s Manikeshwari Industries merged with the Firm and all four constituent partners agreed to

carry on the business in the name and style of M/s. Srishaila and Co. [**the Firm**], the newly established partnership firm.

20. The respondents claim that they carried on the business in the name of M/s. Srishaila and Co., from the year 2008 and during the course of the business, they acquired properties, which were described as Schedule A properties in the statement of claims filed before the Arbitral Tribunal. The respondents allege that, for one reason or another, the appellants failed to reduce the terms and conditions of the partnership in writing. After several reminders, the partnership deed dated 01.04.2012 was executed. After executing the partnership deed, the parties jointly applied for a PAN card to the Income Tax Department.

21. It is claimed that thereafter, differences arose between the parties, and they entered into a settlement and executed the settlement deed dated 10.09.2012 in respect of the properties acquired by the Firm. They allege that the appellants had, by suppressing the existence of a partnership, misled the authorities to allot the subject property in the name of the first appellant and had proceeded to execute a lease cum sale agreement dated 30.06.2010 (registered on 28.08.2010).

22. The respondents claim that in the year 2009-10, Karnataka Industrial Areas Development Board [**KIADB**] allotted the subject property to M/s. Srishaila & Co., which, according to the respondents, was "a partnership firm at that point of time". They allege that the appellants by making a false representation to KIADB represented that M/s. Srishaila and Co., was a proprietorship concern and obtained a lease cum sale agreement in the name of M/s. Srishaila & Co.

Reasons and conclusion

23. It is apparent from the averments to the aforesaid effect that there is no dispute as to the following facts:

(i) That the appellants were carrying on the business under the name of M/s. Srishaila & Co., which was a sole proprietorship concern prior to appellant No.2 and respondents joining as partners to carrying on the business in the name of M/s. Srishaila and Co., [**the Firm**].

(ii) KIADB had executed lease cum sale agreement in favour of appellant No.1 on 30.06.2010 (which was registered on 28.08.2010).

(iii) The Firm had applied for a PAN number, which was dispatched by the Income Tax Department on 29.08.2012.

(iv) The disputes had arisen between the parties and a settlement deed was entered into on 10.09.2012.

24. Notwithstanding that the partnership deed was executed on 01.04.2012, the respondents claim that the Firm commenced its business prior to the execution of the deed and that the subject property was purchased by the Firm. However, appellant No.1 wrongfully got the lease cum sale deed registered in the name of M/s. Srishaila & Co., represented by him as a proprietor. However, a plain reading of the partnership deed, which was admittedly executed by the parties, indicates that it relates to a business to be carried on from 01.04.2012. The following recitals of the partnership deed clearly state the same.

> "WHEREAS the parties hereto have mutually agreed to commence and carry on the business the partnership firm with effect from **1st day of April 2012** and the terms & conditions of the partnership as mutually agreed to are hereby set down in writing."

25. The first clause of the partnership deed also provides that the parties have agreed that the name and style of the partnership firm shall be "M/s. Srishaila & Co." and such other names as the parties may determine. This also does not indicate that the parties were already carrying on the business in partnership. It is also relevant to note that the recitals also recorded as under:

> "WHEREAS Mr. M. Mallikarjuna first party has been carrying on the business of gunny and plastic bags in the Name and style of M/s. Shrishaila & Co., having its office

> at Shop No.117/10/6A, R.M.C. Link Road, Davangere - 577001".
>
> "WHEREAS Mr. S.P.Sridhar, second party, Mrs. Rajeshwari Mallikarjuna, third party and Mr. S.P.Muralidhar, fourth party have expressed their desire to join as partners along with Mr. M.Mallikarjuna, which he readily accepted."

26. In view of the above, the respondents' claim that they had constituted the Firm in 2008 and had been carrying on the business from that year, is contrary to the explicit terms of the partnership deed.

27. It is not disputed that the Firm did not have a bank account. It is also relevant to refer to clause 10 of the partnership deed which reads as under.

> "10. **Bank Accounts:** The firm is herby authorized to open S B or Current Accounts in any Scheduled Bank or in any Co-operative Bank or Nationalized banks. The same will be operated by the party of the First part or by the party of the second part."

28. It is apparent from the above that the parties contemplated that opening a bank account in the future, that is, after they executed the partnership deed.

29. In the aforesaid circumstances, the arbitral clause, which provides for the reference of disputes arising from the affairs of the Firm, necessarily refers to disputes that may arise after it is

constituted. The said clause would not cover any dispute prior to its constitution under the partnership deed. Whilst the respondents rely on the partnership deed insofar as the arbitration clause is concerned, they make claims in respect of a property purchased prior to the constitution of the Firm under the partnership deed.

30. Even if the averments made by the respondents that parties were carrying on their business in partnership in the name of M/s. Srishaila & Co., since 2008 onwards, is accepted – which we do not – the dispute relating to such partnership would not fall within the scope of the arbitration agreement under clause 18 of the partnership deed. This is because the said clause covers disputes arising from the affairs of the Firm constituted in terms of the partnership deed, that is, the partnership firm constituted with effect from 01.04.2012. In this view, we are unable to accept that the arbitration agreement covers the dispute raised by the respondents. There was no arbitration agreement between the parties for referring disputes relating to a period prior to the constitution of the Firm under the partnership deed to arbitration.

31. The Arbitral Tribunal referred to Section 6 of the Partnership Act, 1932, which reads as under.

> "6. **Mode of determining existence of partnership**.—In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together."

32. On the strength of the aforesaid provision, the Arbitral Tribunal observed as under:

> "34. As per the above-extracted provision of law, the Arbitral Tribunal has to examine all the incidents and relations between the parties as shown by the written agreements, verbal agreements together with the surrounding circumstances at the time when the contract was entered into and the subsequent conduct and circumstances, which throw light on the nature of their relationship. Whether the relationship of partners exists or does not exist depends on what was intended by the parties. The question as to whether a person is a partner in a partnership firm is one of fact and has got to be decided after taking into account all the relevant circumstances and factors. Just because the partnership deed is not registered, its very existence cannot be disputed with any rate of success."

33. It is not necessary for us to consider the merits of the aforesaid observations. Assuming that the Arbitral Tribunal could refer to various communications, agreements and subsequent conduct of the parties to determine whether a relationship of partners existed between the parties and the same indicated that the parties were partners prior to the execution of the partnership deed; the disputes arising out of such relationship would not be covered under the arbitration agreement (clause 18 of the

partnership deed). This is because the same are confined to the disputes arising out of the partnership during the continuance of the Firm. The relationship referred to in the arbitration clause is confined to the partnership constituted under the partnership deed, and not to any other contractual agreement that may or may not have existed between the parties.

34. We may also note at this stage that the Arbitral Tribunal had framed the following issues for consideration.

> 1. Whether the claimants prove that M/s. Srishaila and Co., a Partnership Firm, had come into existence pursuant to the Partnership Deed, dated 01.04.2012?
>
> 2. Whether the claimants prove that they are entitled to the execution of the sale deeds in respect of the properties shows as item Nos.2, 8, 11 and 16 of schedule A property, as per the Settlement Agreement dated 10.09.2012?
>
> 3. Whether the respondents prove that the claimants are not the partners of M/s. Srishaila and Co., at all and that the claimants are the partners of only M/s. Manikeshwari Industries?
>
> 4. What order or award?

35. Insofar as the first issue is concerned, whether the Firm had come into existence pursuant to a partnership deed dated 01.04.2012, the Arbitral Tribunal had answered in the affirmative. Consequently, issue No.3 was answered in the negative.

36. The principal dispute was covered by issue No. 2, namely, whether the respondents were entitled for execution of the sale deed. The relief claimed, as well as the impugned award, rest on the terms of the settlement deed between the parties. The same states that the parties had established a Firm, M/s Manikeshwari Industries, in the year 2006, and conducted business on an equal share basis. However, thereafter, they included the firm, M/s Srishaila & Co., with M/s Manikeshwari Industries, and the said Firm was owned by the appellants. The relevant paragraph of the settlement deed reads as follows:

> “We the aforesaid two parties jointly had established a Firm in the name and style of Sri. Manikeshwari Industries at RMC Link Road, Davanagere in the year 2006 to conduct the business and we have conducted the business through the firm by investing equal shares, thereafter in the year 2008-09 included the firm viz., Srishyala and Co., with our firm and the said firm is under the ownership of the First Party.
>
> We have purchased the movable and immovable properties as shown in the Schedule out of the profits earned by the aforesaid two Partnership Firms by investing the funds. The details of the movable and immovable properties are shown in the Schedule hereunder. We have taken financial assistance from the Financial Institutions and private persons for development of the business of the firm and also for purchase of the said properties. The aforesaid movable and immovable properties standing in the joint or individual names on the consent of both the parties we have agreed to sell/dispose of the said properties. In future, at the time of dividing the immovable properties between us, we have agreed to divide the same as per the law."

37. As noted above, the respondents' claim is based on the said settlement agreement. The Arbitral Tribunal had noted the said settlement deed and had also observed that according to the said document, M/s. Srishaila and Co., was merged with M/s Manikeshwari Industries in the year 2008-09. Clearly, the reference to M/s Srishaila and Co. could not be construed as a reference to the partnership firm (the Firm) which was constituted under the partnership deed dated 01.04.2012.

38. The settlement deed refers to the merger of M/s. Srishaila and Co. with M/s. Manikeshwari Industries and notes that the said concern was owned by the appellants. This clearly does not refer to the Firm constituted under the partnership deed dated 01.04.2012.

39. The Arbitral Tribunal's jurisdiction to decide the disputes was confined to only those disputes that had arisen in regard to the Firm constituted under the partnership deed dated 01.04.2012, and not any disputes in respect to the partnership firm named M/s. Manikeshwari Industries, with which the sole proprietorship concern M/s. Srishaila & Co., is stated to have merged.

40. The settlement deed purportedly records a settlement in respect of various immovable properties, which were stated to have been purchased by the profits earned by the partnership firm.

41. Indisputably, the subject property could not have been considered as one that was purchased by the profits of the Firm that was constituted in terms of the partnership deed dated 01.04.2012. It is not necessary to examine whether the said property was purchased with profits earned by another firm in which the parties were partners, as that would not be a dispute covered by the arbitration agreement.

42. Appellant No.1 claims that his signature on the settlement deed was taken forcibly. This contention was not accepted by the Arbitral Tribunal. This brings us to the second aspect that needs to be addressed. This is whether the claims arise from the settlement deed. If so, the disputes would not be arbitrable, as the settlement deed does not include an arbitration clause. There is no agreement between the parties to refer the disputes arising from the settlement agreement to arbitration.

43. It is contended by the learned counsel for the respondents that the respondents had relied on the settlement deed only for the

purposes of pointing out the admissions on the part of the appellants. However, the disputes were referable to those arising from the Firm's affairs; therefore, the arbitration agreement covers the said dispute. We find no merit in the said contention for essentially two reasons. First, the settlement deed is an independent agreement that refers to the distribution of properties purportedly purchased with the earnings of the two firms. If it is accepted, as the respondent claims, that the settlement agreement was entered into to resolve all disputes, including those in respect of the Firm, it would follow that the settlement agreement would be required to be construed as a separate and independent agreement.

44. The respondents essentially seek implementation of the settlement deed. And any dispute regarding the implementation of the same is not covered by the arbitration agreement.

45. In **Young Achievers v. IMS Learning Resources Private Limited**[1], the Supreme Court considered the question whether an arbitration clause survives after the parties had entered into a later agreement. In that case, the parties had entered into an agreement which contained an arbitration clause. However, thereafter, the

[1] (2013) 10 SCC 535

parties entered into a fresh agreement, referred to as the "Exit Paper", which set out the terms and conditions on which the parties had settled their respective claims. The exit paper did not contain any arbitration clause. In this context, the Supreme Court concluded that the arbitration agreement did not survive. The relevant extract of the said judgment is set out below:

> "6. We have now to examine terms of the subsequent agreement titled "Exit Paper" dated 1.2.2011. It is the common case of the parties that the exit paper/agreement entered into between the parties does not contain any arbitration clause. It is useful to extract the relevant portion of the exit paper, which is as follows:
>
> > "With reference to your mail/letter dated 1-2-2011 on closing the centre, from the aforesaid date with mutual consent we have agreed on the following:
> >
> > 1. *Enrolled students*.—All enrolled students of IMS with you will be serviced by you with respect to their classes, workshops and conduct of test series, GD/PI and any other servicing required as per the product manual.
> >
> > 2. *Premises*.—IMS will reserve the first right of utilisation to occupy the premises. In an eventuality of IMS exercising the right to use the premises, then IMS will reimburse the monthly rent for the corresponding months before changing the rental agreement on to IMS name.
> >
> > 3. *Marketing*.—From the abovementioned date you are not eligible to do any marketing and promotional activities in the name of IMS.
> >
> > 4. *Brand*.—From the abovementioned date you are not eligible to use IMS brand in any form.
> >
> > 5. *Monthly claims*.—The partner abides to deposit all the course fees collected for any of IMS

programs till now as per the deposit policy of IMS. All monthly claims will be settled till 31-1-2011 and the claims would be released after the date of termination of the partner agreement.

6. *Security deposit*.—The security deposit amount will be refunded back to you after the completion of servicing of all enrolled IMS students. In case of any due on partner to the Company (unsettled fees, 9 loan or advance for centre activities, etc.), same amount will be deducted from the security deposit.

7. *Non-compete clause*.—The partner has averred that neither he, nor his family members are directly or indirectly interested in any business in direct competition with that of IMS and the partner agrees and undertakes to ensure that neither he nor his family members shall be involved in or connected to any business in direct competition with that of IMS at any time during the currency of this agreement and for a further period of six months thereafter.

8. *Full and final settlement*.—I/We accept all the abovementioned points and confirm that upon receipt of the sum stated hereinafter in full and final settlement of all my/our claims, neither me/we nor any person claiming by or through me/us shall have any further claims against IMS whatsoever.

Any violation of Points 1, 3, 4, 5 and 7 from the partner's end will attract legal course of action and penalties from IMS ranging from forfeiture of the security deposit and pending claims.

I hereby accept the above terms and conditions."

7. The exit paper would clearly indicate that it is a mutually agreed document containing comprehensive terms and conditions which admittedly does not contain an arbitration clause. We are of the view that the High Court is right in taking the view that the case on hand, is not a case involving assertion by the respondent of accord a satisfaction in respect of the earlier contracts dated 1-4-2007 and 1-4-2010. If that be so, it could have

> referred to the arbitrator in terms of those two agreements going by the dictum in Union of India v. Kishorilal Gupta and Bros. This Court in *Kishorilal Gupta* case examined the question whether an arbitration clause can be invoked in the case of a dispute under a superseded contract. The principle laid down is that if the contract is superseded by another, the arbitration clause, being a component part of the earlier contract, falls with it. But where the dispute is whether such contract is void ab intio, the arbitration clause cannot operate on those disputes, for its operative force depends upon the existence of the contract and its validity. The various other observations were made by this Court in the abovementioned judgment in respect of "settlement of disputes arising under the original contract, including the dispute as to the breach of the contract and its consequences." The principle laid down by the House of Lords in Heyman v. Darwins Ltd. was also relied on by this Court for its conclusion. The collective bargaining principle laid down by the US Supreme Court in Nolde Bros. case would not apply to the facts of the present case.
>
> 8. We may indicate that so far as the present case is concerned, parties have entered into a fresh contract contained in the exit paper which does not even indicate any disputes arising under the original contract or about the settlement thereof, it is nothing but a pure and simple novation of the original contract by mutual consent. Above being the factual and legal position, we find no error in the view taken by the High Court. The appeal, therefore, lacks merit and stands dismissed, with no order as to costs.

46. We may note that in the present case, the partnership deed provides for a ratio in which the parties would share their profits and the assets in the event of dissolution. The settlement deed specified a different ratio in which the assets were to be distributed.

47. It is not possible to accept that the subject property belonged to the Firm, as it was acquired prior to its constitution. However, apart from that, it is also clear that the arbitration agreement would not apply to any disputes arising out of the settlement deed.

48. It is well settled that if an agreement containing an arbitration clause is superseded by another, the arbitration clause in the earlier agreement would also stand terminated with that agreement. In these circumstances, the question of whether any dispute is required to be referred to arbitration would necessarily depend on whether there is any agreement to refer the disputes arising from the later agreement to arbitration.

49. It is also relevant to refer to the following observations made by the Supreme Court in the case of **Damodar Valley Corporation v. K.K.Kar**[2]:

> "7.... As the contract is an outcome of the agreement between the parties it is equally open to the parties thereto to agree, to bring it to an end or to treat it as if it never existed. It may also be open to the parties to terminate the previous contract and substitute in its place a new contract or alter the original contract in such a way that it cannot subsist. In all these cases, since the entire contract is put an end to, the arbitration clause, which is a part of it, also perishes along with it. Section 62 of the

[2] (1974)1 SCC 141

> Contract Act incorporates this principle when it provides that if the parties to a contract agree to substitute a new contract or to rescind or alter it, the original contract need not be performed. Where, therefore, the dispute between the parties is that the contract itself does not subsist either as a result of its being substituted by a new contract or by rescission or alteration, that dispute cannot be referred to the arbitration as the arbitration clause itself would perish if the averment is found to be valid. As the very jurisdiction of the arbitrator is dependent upon the existence of the arbitration clause under which he is appointed, the parties have no right to invoke a clause which perishes with the contract.'"

50. In the present case, there is no dispute that the parties have entered into a fresh agreement. Plainly, there is a novation. Thus, the arbitration clause under the earlier agreement is inapplicable. Unless the parties have specifically agreed or are agreeable, disputes regarding the novated agreement are not referable to arbitration under the arbitration clause in the earlier agreement.

51. In view of the above, the appeal is allowed and the impugned order and the award are set aside.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C.M. POONACHA)
JUDGE

KMV