IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY

ON THE 16th OF SEPTEMBER, 2026

MISC. APPEAL No. 6075 of 2025

NAWAB RAZA AND OTHERS

Versus

USMAN KHAN AND ANOTHER

Appearance:-

Shri Shashank Shekhar – Senior Advocate with Shri Ankit Saxena – Advocate for the appellants.

Shri Mukhtar Ahmad – Advocate for respondent No.1.

Ms. K.C.V. Rao – Panel Lawyer for respondent No.2/State.

JUDGMENT

This Miscellaneous Appeal under Order XLIII Rule 1(u) of the Code of Civil Procedure, 1908 (for brevity- "CPC") has been preferred by the appellants/defendants challenging the order dated 17.04.2025 passed by the learned 23rd District Judge, Bhopal in Regular Civil Appeal No.125/2024, whereby the appeal preferred by respondent No.1/plaintiff was allowed, the order dated

13.09.2024 passed by the learned Trial Court was set aside and the matter was restored to the Trial Court for adjudication on merits.

2. Briefly stated, the facts of the case are that respondent No.1/plaintiff instituted a Civil Suit RCS No. 577-A/2024 before the Civil Court i.e. 13th Civil Judge, Senior Division, Bhopal (herein referred as "Trial Court") seeking declaration and permanent injunction in respect of the disputed property i.e. land/farm house No.06 "chha" bearing Khasra No.46/2 and 78/1/2/D, area measuring 0.109 hectare, situated at Village Kohefiza, Tehsil Huzur, District Bhopal. The plaintiff sought a declaration that the partnership deed dated 21.05.2019 is null and void and not binding upon him. He also sought permanent injunction restraining the appellants/defendants from interfering with his possession over the disputed land.

3. It is the case of respondent No.1/plaintiff that the partnership deed dated 21.05.2019 and the subsequent deed dated 26.02.2024 amending the said partnership deed had been brought into existence by the appellants/defendants by practising fraud and conspiracy upon him. According to the plaintiff, he is an illiterate person and does not know the English language in which the disputed partnership deed was prepared and, therefore, he did not knowingly and voluntarily execute or understand the contents of the said document. It was further the case of the plaintiff that, under the disputed partnership deed, a 5% share was purportedly shown in his favour against the disputed land, whereas the appellants/defendants thereafter sought to have their names mutated in the revenue records in respect of

the said property. The plaintiff asserted that he was in possession of the disputed land and that the appellants/defendants were attempting to interfere with and disturb his possession on the strength of the aforesaid partnership deeds.

4. During pendency of the civil suit, the appellants/defendants filed an application under Order VII Rule 11 CPC r/w Section 8 of the Arbitration and Conciliation Act, 1996 (in short "Act, 1996") contending that the partnership deed dated 21.05.2019 contained an arbitration clause and that the disputes between the parties arising out of the partnership deed were liable to be referred to arbitration. It was contended that Clause 22 of the partnership deed provided for resolution of disputes through arbitration in accordance with the Act, 1996.

5. The learned Trial Court, vide order dated 13.09.2024, allowed the aforesaid application and, taking into consideration the arbitration clause contained in the partnership deed, held that the dispute substantially arose out of the partnership arrangement and that a mere allegation of fraud would not, by itself, exclude the jurisdiction of the Arbitral Tribunal. Accordingly, the civil proceedings were disposed of in terms of the said order.

6. Being aggrieved by the order dated 13.09.2024, respondent No.1/plaintiff preferred Regular Civil Appeal No.125/2024 before the learned 23rd District Judge, Bhopal (herein referred as First Appellate Court). The learned First Appellate Court, vide impugned order dated 17.04.2025, allowed the appeal and set aside the order passed by the learned Trial Court. The First Appellate Court was of the view that the plaintiff was not merely raising a dispute arising out of an

admittedly valid partnership deed, but was disputing the very execution, knowledge, consent and validity of the partnership deed containing the arbitration clause. Consequently, the suit was restored to the Trial Court for adjudication on merits.

7. Being aggrieved by the aforesaid order dated 17.04.2025, the appellants/defendants have preferred the present Miscellaneous Appeal.

8. It is pertinent to note that during pendency of the present Miscellaneous Appeal, respondent No.1/plaintiff had raised an objection regarding maintainability of the appeal by filing I.A. No.22910/2025. This Court, vide order dated 05.12.2025, after considering the rival submissions and the decisions relied upon by the parties, dismissed the said application and held the present Miscellaneous Appeal to be maintainable under Order XLIII Rule 1(u) of CPC. Thus, the question regarding maintainability of the present appeal stands concluded.

9. Learned senior counsel for the appellants submits that the impugned order passed by the learned First Appellate Court is contrary to law. It is submitted that the partnership deed dated 21.05.2019 is a document containing a specific arbitration clause and that the dispute raised by respondent No.1/plaintiff arises out of and is connected with the partnership arrangement. It is further submitted that the learned Trial Court, after considering the nature of the dispute and the arbitration clause contained in the partnership deed, had rightly allowed the application under Section 8 of the Act, 1996.

10. Learned senior counsel for the appellants further submits that a mere allegation of fraud or conspiracy is not sufficient to exclude the jurisdiction of the Arbitral Tribunal. According to learned senior counsel, unless the allegations are of such a serious nature as to affect the entire agreement, including the arbitration agreement itself, or have implications in the public domain, the dispute remains arbitrable. It is submitted that the allegations made by respondent No.1 essentially relate to disputes *inter se* between the parties arising out of the partnership deed and are, therefore, capable of being adjudicated by an Arbitral Tribunal.

11. Learned counsel for respondent No.1/plaintiff, on the other hand, supports the impugned order and submits that the plaintiff has specifically disputed the very execution and validity of the partnership deed containing the arbitration clause. It is submitted that the case of respondent No.1 is not merely that there has been a breach of an existing and admittedly valid agreement, but that the partnership deed itself was brought into existence by practising fraud upon him and was not knowingly and voluntarily executed by him. Learned counsel for respondent No.1 further submits that the plaintiff is an illiterate person and does not know the English language in which the disputed partnership deed was prepared. It is submitted that the plaintiff never knowingly consented to the terms of the said deed and that the subsequent amended deed dated 26.02.2024 was also executed in pursuance of the same disputed transaction. It is further submitted that the plaintiff has specifically questioned the manner in which the document was

brought into existence and has alleged conspiracy and fraud in obtaining his signature thereon.

12. Learned counsel for respondent No.1 further submitted that, considering the present value of the disputed land and the fact that the disputed partnership deed itself purports to confer only a 5% share upon the plaintiff against the said land, the partnership deed cannot be accepted on its face value. It was submitted that no consideration was given to respondent No.1/plaintiff for conferring such share, which, according to learned counsel, demonstrates that the alleged partnership arrangement was a sham and that the signature of respondent No.1/plaintiff was obtained by fraud and conspiracy. It was further submitted that, while the appellants/defendants have thereafter sought mutation of their names in the revenue record, they have also attempted to interfere with the plaintiff's possession over the disputed property. According to learned counsel, these circumstances demonstrate that the dispute is not a mere dispute concerning the performance or enforcement of an otherwise admitted partnership arrangement, but goes to the very foundation and validity of the document relied upon by the appellants.

13. It is further submitted by learned counsel for respondent No.1 that where the very agreement containing the arbitration clause is under challenge on the ground of fraud, conspiracy, lack of knowledge and absence of valid consent, the foundational issue regarding the existence and validity of the arbitration agreement itself requires adjudication by the Civil Court. According to learned

counsel, the dispute cannot mechanically be referred to arbitration without first examining whether there existed a valid agreement between the parties containing a valid arbitration clause.

14. Learned counsel for respondent No.1 further submits that where the plaintiff specifically alleges that the disputed partnership deed was procured by conspiracy and fraud and that he had not knowingly and voluntarily executed the same, the allegations cannot be brushed aside merely by describing them as an ordinary contractual dispute. Learned counsel has relied upon the decisions in **Rajia Begum v. Barnail Mukherjee, 2026 SCC OnLine SC 135,** and **Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak, AIR 1962 SC 406,** in support of his submissions.

15. Learned senior counsel for the appellants, in response, submits that although respondent No.1 has pleaded that the agreement in question was obtained by conspiracy, there is no specific averment in the plaint disclosing such fraud as would render the dispute non-arbitrable. It is submitted that the allegations, even if taken at their face value, essentially concern the partnership arrangement and the rights claimed by the parties thereunder. Learned senior counsel has relied upon the order dated 17.06.2025 passed by the Division Bench of this Court in **Misc. Petition No.709/2024 (Sapna Sangeeta Ventures LLP and Others Vs. Shri Chandra Kumar and Others)**.

16. Heard learned counsel for the parties and perused the record.

17. The Act, 1996 deals, *inter alia,* with domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards. Chapter II of Part I of the Act, 1996 deals with arbitration agreements. Section 2 of the Act contains the relevant definitions, whereas an "arbitration agreement" is specifically defined under Section 7 of the Act, 1996. Section 7 provides that an arbitration agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. Further, the arbitration agreement is required to be in writing and may be contained in a document signed by the parties, in an exchange of letters or other means of telecommunication, including electronic communication, which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other. Further, reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

18. The term "arbitration agreement", being an agreement between the parties, has to be understood in the light of the general principles governing agreements and contracts under the Indian Contract Act, 1872, particularly where the arbitration agreement is contained in an arbitration clause in a contract or is in

the form of a separate agreement. The essential element is *consensus ad idem*, that is, the parties must agree upon the same thing in the same sense. The parties must be competent to contract and their consent must be free consent. A person who is not competent to contract, such as a minor or a person of unsound mind, cannot validly enter into a contract in the manner contemplated by law. Likewise, consent which is vitiated by coercion, undue influence, fraud, misrepresentation or mistake cannot, in the circumstances contemplated by the Indian Contract Act, be regarded as free consent. Thus, where an agreement suffers from such a legal infirmity, the validity and enforceability of the agreement have to be examined in accordance with law.

19. In the matter at hand, the appellant contends that the agreement in question contains an arbitration clause and, therefore, the dispute arising between the parties ought to be referred to arbitration under Section 8 of the Act, 1996. Thus, while considering an application under Section 8 of the Act, 1996, the Court is not required to finally adjudicate the disputed questions of fact concerning the underlying transaction. At the same time, the Court cannot compel a party to submit to arbitration without satisfying itself, at the prima facie level contemplated by Section 8, that there exists a valid arbitration agreement binding upon such party.

20. Section 8 of the Act, 1996 empowers a judicial authority to refer the parties to arbitration where the action brought before it concerns a matter which is the subject of an arbitration agreement. Section 8 of the Act, 1996 reads as under:-

> "**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 to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.
> (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:
> Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.
> (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."

21. Thus, while considering an application under Section 8 of the Act, 1996, particularly after the amendment brought about by Act No.3 of 2016, the Court is required to examine whether the matter brought before it is the subject of an arbitration agreement and whether the existence and validity of such arbitration agreement are *prima facie* established. Under the amended provision, the judicial authority is required to refer the parties to arbitration unless it finds that, ***prima facie,* no valid arbitration agreement exists**. The scope of such examination is limited and the Court is not required to finally adjudicate disputed questions of fact at this stage. However, where the very agreement containing the arbitration clause

is specifically questioned and it is alleged that the same was obtained by fraud, conspiracy or other unlawful means, the Court is required to consider whether, in the facts and circumstances of the case, a valid arbitration agreement can *prima facie* be said to exist. The mere presence of an arbitration clause in a disputed document cannot, by itself, dispense with the statutory requirement of existence of a valid arbitration agreement under Section 8 of the Act.

22. In the present case, therefore, the question is not merely whether the disputed partnership deed contains an arbitration clause, but whether the partnership deed itself, containing such arbitration clause, was validly executed with the knowledge and consent of respondent No.1/plaintiff. Where the specific case of the plaintiff is that the document was obtained by fraud and conspiracy and that he had not knowingly and voluntarily executed the same, the question regarding the validity and existence of the arbitration agreement assumes significance at the threshold. If the document containing the arbitration clause itself is *prima facie* shown to be the result of such unlawful means, the requirement under Section 8 that there must exist a valid arbitration agreement cannot be treated as satisfied merely on the basis of the disputed document. This aspect, therefore, requires consideration before the parties can be compelled to submit their dispute to arbitration.

23. The Supreme Court, while considering the provisions of the erstwhile Arbitration Act, 1940, in **Abdul Kadir Shamsuddin Bubere** (supra), has held that serious allegations of fraud against a party, particularly when the party charged

with fraud desires a public inquiry, may constitute sufficient cause for the Court to refuse to refer the dispute to arbitration. However, every allegation imputing some kind of dishonesty, particularly in matters of accounts, would not necessarily be sufficient to take the matter out of the forum which the parties themselves have chosen. The Court is required to examine the nature of the allegations. Paragraph 13 of the said judgment reads as under:

> "13. There is no doubt that where serious allegations of fraud are made against a party and the party who is charged with fraud desires that the matter should be tried in open court, that would be a sufficient cause for the court not to order an arbitration agreement to be filed and not to make the reference. But it is not every allegation imputing some kind of dishonesty, particularly in matters of accounts, which would be enough to dispose a court to take the matter out of the forum which the parties themselves have chosen…."

24. Thereafter, in **A. Ayyasamy v. A. Paramasivam and others, reported in (2016) 10 SCC 386,** the Supreme Court considered the earlier law relating to allegations of fraud and arbitrability and explained the distinction between serious allegations of fraud and allegations of fraud simpliciter. The Supreme Court observed as under:-

> "23. A perusal of the aforesaid two paragraphs brings into fore that the Law Commission has recognized that in cases of serious fraud, courts have entertained civil suits. Secondly, it has tried to make a distinction in cases where there are allegations of serious fraud and fraud simplicitor. It, thus, follows that those cases where there are serious allegations of fraud, they are to be treated as non-arbitrable and it is only the civil court which should decide such matters. However, where there are allegations of fraud simplicitor and such allegations are merely alleged, we are of the opinion it may not be necessary to nullify the effect of the arbitration agreement between

the parties as such issues can be determined by the Arbitral Tribunal.

25. In view of our aforesaid discussions, we are of the opinion that mere allegation of fraud simplicitor may not be a ground to nullify the effect of arbitration agreement between the parties. It is only in those cases where the Court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by civil court on the appreciation of the voluminous evidence that needs to be produced, the Court can sidetrack the agreement by dismissing application under Section 8 and proceed with the suit on merits. It can be so done also in those cases where there are serious allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself of the entire contract which contains the arbitration clause or the validity of the arbitration clause itself. Reverse position thereof would be that where there are simple allegations of fraud touching upon the internal affairs of the party inter se and it has no implication in the public domain, the arbitration clause need not be avoided and the parties can be relegated to arbitration. While dealing with such an issue in an application under Section 8 of the Act, the focus of the Court has to be on the question as to whether jurisdiction of the Court has been ousted instead of focusing on the issue as to whether the Court has jurisdiction or not. It has to be kept in mind that insofar as the statutory scheme of the Act is concerned, it does not specifically exclude any category of cases as non-arbitrable. Such categories of non- arbitrable subjects are carved out by the Courts, keeping in mind the principle of common law that certain disputes which are of public nature, etc. are not capable of adjudication and settlement by arbitration and for resolution of such disputes, Courts, i.e. public for a, are better suited than a private forum of arbitration. Therefore, the inquiry of the Court, while dealing with an application under Section 8 of the Act, should be on the aforesaid aspect, viz. whether the nature of dispute is such that it cannot be referred to arbitration, even if there is an arbitration agreement between the parties. When the case of fraud is set up by one of the parties and on that basis that party wants to wriggle out of that arbitration agreement, a strict and meticulous inquiry into the allegations of fraud is needed and only

when the Court is satisfied that the allegations are of serious and complicated nature that it would be more appropriate for the Court to deal with the subject matter rather than relegating the parties to arbitration, then alone such an application under Section 8 should be rejected.

45.2 Allegations of fraud are not alien to ordinary civil courts. Generations of judges have dealt with such allegations in the context of civil and commercial disputes. If an allegation of fraud can be adjudicated upon in the course of a trial before an ordinary civil court, there is no reason or justification to exclude such disputes from the ambit and purview of a claim in arbitration. Parties who enter into commercial dealings and agree to a resolution of disputes by an arbitral forum exercise an option and express a choice of a preferred mode for the resolution of their disputes. Parties in choosing arbitration place priority upon the speed, flexibility and expertise inherent in arbitral adjudication. Once parties have agreed to refer disputes to arbitration, the court must plainly discourage and discountenance litigative strategies designed to avoid recourse to arbitration. Any other approach would seriously place in uncertainty the institutional efficacy of arbitration. Such a consequence must be eschewed."

25. The aforesaid principles were further considered by the Supreme Court in **NTPC Ltd. v. M/s SPML Infra Ltd., reported in (2023) 9 SCC 385,** wherein, while referring to the earlier decision in V**idya Drolia and others v. Durga Trading Corporation, reported in (2021) 2 SCC 1,** the Supreme Court reiterated that, as a general rule, the Arbitral Tribunal is the preferred first authority to determine questions of non-arbitrability and that interference at the referral stage is confined to cases where the claim is manifestly or *ex facie* non-arbitrable. The Court further observed that the standard of scrutiny at the referral stage is *prima facie* and that the referral Court should not undertake a full review of the contested facts. The relevant observations read as under:-

> "26. As a general rule and a principle, the arbitral tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. As an exception to the rule, and rarely as a demurrer, the referral court may reject claims which are manifestly and ex-facie non-arbitrable…... "

It has been further observed;-

> "27. The standard of scrutiny to examine the non-arbitrability of a claim is only prima facie. Referral courts must not undertake a full review of the contested facts; they must only be confined to a primary first review and let facts speak for themselves. This also requires the courts to examine whether the assertion on arbitrability is bona fide or not. The prima facie scrutiny of the facts must lead to a clear conclusion that there is not even a vestige of doubt that the claim is non-arbitrable. On the other hand, even if there is the slightest doubt, the rule is to refer the dispute to arbitration."

26. The Supreme Court while considering the invocation of the "fraud exception" to arbitrability, in **Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties & Ors., (2021) 4 SCC 786,** had relied upon its earlier judgment in **Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., [(2021) 4 SCC 713],** observed as thus-

> "6. We have, in our judgment in Avitel Post Studioz Limited & Ors. v. HSBC PI Holding (Mauritius) Ltd., laid down the law on invocation of the "fraud exception" in some detail, which reasoning we adopt and follow. The said judgment indicates that given the case law since N. Radhakrishnan [(2010) 1 SCC 72], it is clear that N. Radhakrishnan (supra), as a precedent, has no legs to stand on. If the subject matter of an agreement between parties falls within section 17 of the Indian Contract Act, 1872, or involves fraud in the performance of the contract, as has been held in the aforesaid judgment, which would amount to deceit, being a civil wrong, the subject matter of such agreement would certainly be arbitrable."

It is further held as thus-

> "8. We are also inclined to accept Shri Navare's argument on Section 8 of the 1996 Act, in view of some of the recent judgments on section 8 after the 2015 Amendment Act. (See Ameet Lalchand Shah v. Rishabh Enterprises, (2018) 15 SCC 678 at pp. 698-700, Mayavati Trading Pvt. Ltd. v. Pradyut Deb Burman, (2019) 8 SCC 714 at pp. 724-725, and Emaar MGF Land Ltd. v. Aftab Singh, (2019) 12 SCC 751 at pp. 779-783). It is enough to state that there is a sea change between Section 8 of the 1996 Act and Section 20 of the Arbitration Act, 1940, as has been held in paragraph 17 to 21 of Avitel Post Studioz Limited & Ors. v. HSBC PI Holding (Mauritius) Ltd.. Post amendment, it is clear that the judicial authority before which an action is brought shall, if the other conditions of Section 8 are met, refer the parties to arbitration unless it finds that prima facie, no valid arbitration agreement exists. As has been held hereinabove, in the present case, the finding that is returned is correct – a valid arbitration agreement certainly exists as the agreements that are sought to be cancelled are not stated not to have ever been entered into."

27. Thus, the aforesaid decisions make it clear that the mere allegation of fraud, by itself, cannot be treated as determinative of non-arbitrability. The nature, seriousness and effect of the allegations, as also the question whether the dispute is manifestly non-arbitrable, have to be examined in the facts and circumstances of each case.

28. The question, therefore, is whether the allegations made in the plaint, considered in the backdrop of the other attending facts and circumstances of the case, constitute merely a dispute concerning the rights and obligations arising out of an otherwise accepted partnership arrangement, or whether they raise a foundational dispute regarding the validity and existence of the very agreement which contains the arbitration clause.

29. In the present case, respondent No.1/plaintiff has not merely alleged non-performance of the partnership deed or breach of any term thereof. He has questioned the very partnership deed dated 21.05.2019 and the subsequent amended deed dated 26.02.2024. His specific case is that he is an illiterate person, does not know the English language in which the document was prepared, and that his signatures were obtained by practising fraud and by conspiracy. He has also questioned the circumstances in which a 5% share was purportedly shown in his favour against the disputed land and has alleged that the appellants/defendants thereafter sought to derive rights in the disputed property on the strength of the said documents.

30. Although the appellants/defendants contend that the word “fraud” has not been pleaded in the plaint, but it cannot be acceded to because fraud has been very much pleaded in one of the paragraphs of the plaint and the specific allegation of conspiracy cannot be ignored, as conspiracy includes the use of unlawful means or commission of an unlawful act for procuring the disputed partnership deed. It was submitted that any act or means which is unlawful and by which the document containing the arbitration clause has been obtained cannot result in a valid agreement between the parties. Thus, where the very partnership deed containing the arbitration clause is alleged to have been obtained by fraud and conspiracy, the existence of a valid arbitration agreement, as contemplated under Section 8 of the Act, 1996, itself becomes a matter requiring consideration. Accordingly, the mere fact that the allegation is couched in terms of conspiracy rather than fraud cannot,

by itself, be a ground to treat the disputed document as a valid agreement at the stage of reference.

31. At this stage, this Court is not required to finally adjudicate upon the truthfulness of the allegations of fraud and conspiracy, nor is it required to record a final finding regarding the validity of the partnership deed. Nevertheless, for the limited purpose of determining the forum in which the foundational dispute is required to be adjudicated, the allegations contained in the plaint, the nature of the disputed document and the other attending facts and circumstances cannot be brushed aside as a mere allegation of fraud simpliciter.

32. Ordinarily, where an agreement containing an arbitration clause is challenged on the ground of fraud or invalidity, such challenge does not *ipso facto* render the dispute non-arbitrable. However, the present case has to be examined on its own facts. Having regard to the nature of the challenge raised by respondent No.1/plaintiff, the circumstances in which the partnership deed is alleged to have been brought into existence, the specific plea regarding his lack of understanding of the language of the document, proportionate value of the land belongs to him and the consequential rights claimed over the disputed property, this Court is of the considered view that the foundational question regarding the validity of the partnership deed requires adjudication by the Civil Court, instead of private forum of Arbitration.

33. This Court is, therefore, of the considered view that the learned First Appellate Court was justified in setting aside the order dated 13.09.2024 passed by

the learned Trial Court and in restoring the civil suit for adjudication in accordance with law.

34. Consequently, this Court finds no error in the impugned order dated 17.04.2025 passed by the learned 23rd District Judge, Bhopal in Regular Civil Appeal No.125/2024, whereby the order dated 13.09.2024 passed by the learned Trial Court was set aside and the civil suit was restored for adjudication on merits.

35. The impugned order dated 17.04.2025 passed by the learned 23rd District Judge, Bhopal is accordingly affirmed. The civil suit shall proceed before the learned Trial Court and shall be adjudicated in accordance with law.

36. Needless to say, this Court has not expressed any opinion on the merits of the case, including as to the validity of the partnership deed dated 21.05.2019 or any other disputed question arising between the parties. The aforesaid questions shall be considered and decided by the learned Trial Court on their own merits, in accordance with law, uninfluenced by any observation made in this judgment.

37. The Miscellaneous Appeal is accordingly dismissed.

(RAMKUMAR CHOUBEY)
JUDGE

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