Sayali

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

ARBITRATION PETITION (L) NO. 15612 OF 2026

Fatima Gulam Rasul Bhuraniya **... Petitioner**

Vs.

1. **Radio Restaurant**
2. **Abdul Samad Yusuf Agloria**
3. **Abdul Hameed Yusuf Agloria**
4. **Huzefa Gulam Rasul Bhuraniya** **... Respondents**

SAYALI DEEPAK UPASANI

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Date: 2026.07.21 14:59:26 +0530

Mr. Raghavendra S. Mehrotra with Ms. Madhat J. Shaikh i/b Lawkhart Legal Advocates and Legal Consultants, for the petitioner.

Mr. Mayur Khandeparkar with Mr. Hasan Mushabber i/b Negandhi Shah and Himayatullah, for the respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 17, 2026.

PRONOUNCED ON : JULY 21, 2026

JUDGMENT:

1. The present Petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. The petitioner is asking for interim protection in respect of the estate of her deceased husband, Late Mr. Gulam Rasul Suleman Bhuraniya, and his 25% share in the partnership firm M/s. Radio Restaurant. By this petition, the petitioner has prayed for the following reliefs:

(a) To restrain the respondents from selling, transferring, creating any third party rights, or otherwise dealing with the property of Radio Restaurant;

(b) To direct the respondents to disclose on oath all movable and immovable assets of the partnership firm, including the land on which Radio Restaurant is situated;

(c) To direct the respondents to produce on oath the financial statements, income tax returns and bank records of Respondent No.1 from October 2019 till today;

(d) To direct the respondents to deposit 25% of the profits earned after the death of the deceased partner before this Court;

(e) To appoint a Court Receiver to supervise the management of Respondent No.1 so that the business is not disposed of or its value is not reduced during the arbitration proceedings;

(f) To grant such other reliefs as may be necessary in the facts of the case.

2. According to the petitioner, the facts leading to the filing of the present petition are as follows. The petitioner is the widow of Late Mr. Gulam Rasul Suleman Bhuraniya, who was holding 25% share in Respondent No.1 partnership firm. The partnership between the partners was governed by a Partnership Deed dated 9 November 2005. Clause 17 of the said deed contains an arbitration clause for deciding disputes between the partners and also their legal heirs and representatives.

3. The petitioner's husband expired on 19 October 2019. After his death, the petitioner and the other legal heirs became entitled to succeed to his estate, including his interest in the partnership firm. The petitioner says that after her husband's death, Respondent No.4 assured her that her lawful rights, including the deceased partner's 25% share, would be protected according to Sharia law. However, sometime in the year 2025, she came to know that Respondent No.4 had made himself a partner in the firm without her knowledge or consent. According to the petitioner, this was done by ignoring her rights as one of the legal heirs.

4. The petitioner says that she has genuine fear that the respondents are trying to affect her rights by creating third party rights, bringing other persons into the business, and dealing with the assets and goodwill of the partnership firm. Therefore, on 24 June 2025, she issued a legal notice claiming her rights in the estate of the deceased partner, including his share in the partnership firm. On 11 July 2025, the respondents sent a reply denying her claims and stated that a detailed reply would be given. According to the petitioner, no further reply was given by the respondents from July 2025 till January 2026.

5. Thereafter, on 5 February 2026, the petitioner invoked the arbitration clause and nominated a Sole Arbitrator. According to her, even this notice was not replied to by the respondents. In these circumstances, she submits that she has no effective remedy except to approach this Court. She has, therefore, filed the present petition seeking urgent interim relief under Section 9 of the Arbitration and Conciliation Act, 1996.

6. Mr. Raghavendra Mehrotra, learned counsel for the petitioner, submitted that Clause 17 of the Partnership Deed dated 9 November 2005 is a valid and binding arbitration agreement. According to him, the clause is very wide and covers disputes between the partners themselves, disputes involving their legal heirs and representatives, and also disputes relating to the accounts, assets, liabilities, and affairs of the partnership firm. Learned counsel further submitted that it is well settled that an arbitration agreement does not come to an end only because one of the parties has died. According to him, such an agreement continues and can be enforced by or against the legal heirs and representatives of the deceased. Therefore, he submitted that the present dispute is covered by the arbitration clause and can be decided by arbitration. He further submitted that after the death of the deceased partner on 19 October 2019, Respondent No.4, who is the petitioner's stepson, repeatedly assured the petitioner that her lawful rights in the estate of the deceased partner, including his 25% share in the partnership firm, would be fully protected. Believing those assurances, the petitioner did not take any legal action for some time. However, in the year 2025, she came to know that Respondent No.4 had made himself a partner of Respondent No.1 without informing her or taking her consent. According to the petitioner, this was done behind her back and by completely ignoring her rights as a legal heir.

7. Learned counsel submitted that under Mohammedan law, the petitioner is a sharer and has a vested right in the estate of the deceased partner. According to him, such a right cannot be defeated by the unilateral acts of Respondent No.4, who claims as a residuary heir. He further submitted that the respondents have failed to render accounts, have not paid the petitioner's lawful share in the profits, and are now trying to create third party rights in the partnership business through one Mr. Akbar Shaikh alias Munna. According to him, these acts are intended to reduce or defeat the petitioner's lawful rights. On these grounds, he prayed that the reliefs sought in the petition be granted.

8. In support of his submissions, learned counsel for the petitioner relied upon the judgments of the Supreme Court in *Rahul Verma and Others Vs. Rampat Lal Verma and Others,* 2025 SCC Online SC 578, and the decision of this Court in *Priya Rishi Bhuta and Another Vs. Vardhaman Engineers and Builders and Others,* 2022 SCC Online Bom 1136.

9. Mr. Mayur Khandeparkar, learned counsel appearing for the respondents, opposed the petition. He submitted that the petition deserves to be rejected for several reasons. According to him, there is no arbitration agreement between the petitioner and Respondent No.1 because, after the death of the deceased partner, one of his legal heirs was inducted as a partner under the Partnership Deed dated 19 October 2019 in accordance with the earlier Partnership Deed dated 9 November 2005. He submitted that Respondent No.1 has never agreed to arbitrate any dispute with the petitioner. According to him, the conduct of Respondent No.1 also does not show any intention to accept such an arbitration agreement. He further submitted that the partnership firm is not concerned with disputes between the legal heirs of the deceased partner. According to him, after execution of the Partnership Deed dated 19 October 2019, there is no arbitration agreement between the petitioner and the legal heirs regarding their personal disputes. He also submitted that the petitioner is neither a party nor a signatory to the Partnership Deed dated 19 October 2019. Therefore, according to him, the arbitration clause contained in the Partnership Deed dated 9 November 2005 cannot now be invoked by the petitioner against Respondent No.1.

10. Learned counsel further submitted that for a long time no business activities were carried on by M/s. Radio Restaurant because the business remained under the control of the Court. According to him, for that reason no Income Tax Returns were filed by either the earlier partners or the present partners till the disputes pending before the Hon'ble Supreme Court were decided. He submitted that after the Court Receiver of this Court released certain amounts to the partnership firm, Respondent No.1 filed its Income Tax Return for the Assessment Year 2025 to 2026 after first paying Rs.25,00,000 and thereafter Rs.3,26,060 towards income tax, making a total payment of Rs.28,26,060.

11. Learned counsel also submitted that by a letter dated 6 September 2024, a request was made to the Court Receiver, High Court, Bombay to release an amount of Rs.1,64,23,639 in favour of Respondent No.1. He further relied upon Clause 16 of the Partnership Deed, which provides that after the death of a partner, the surviving partners are entitled to continue the business either by inducting the heir or heirs of the deceased partner or even without doing so. On the basis of this clause, he submitted that the petition is without merit and deserves to be rejected.

REASONS AND ANALYSIS:

12. I have one through the pleadings, documents placed on record, the Partnership Deed dated 9 November 2005, the Partnership Deed dated 19 October 2019, the notices exchanged by both sides and the judgments relied by the learned advocates. At this stage, this Court is not deciding finally the rights of the parties. The Court has to see whether the petitioner has made out a case for temporary protection till the disputes are decided in arbitration. While doing so, the objections raised by the respondents also cannot be left aside. Every important submission made by both sides is required to be looked into because an order under Section 9 cannot be passed only because arbitration is invoked or only on sympathetic ground.

13. The first objection raised by the respondents is that there is no arbitration agreement between the petitioner and Respondent No.1. According to them, after the death of the original partner, one legal heir was taken as partner under the Partnership Deed dated 19 October 2019. Therefore, they say the petitioner cannot rely upon the arbitration clause in the old Partnership Deed dated 9 November 2005. At this stage, this submission does not appear correct. Clause 17 of the Partnership Deed is not only for disputes between the original partners. The clause also speaks about legal representatives and heirs. When such words are used by the parties, it becomes difficult to say that the arbitration clause came to an end only because one partner expired. Normally, an arbitration agreement does not finish only on death of a party. Unless the agreement clearly says so, such conclusion cannot be drawn only because a fresh deed was executed afterwards.

14. The respondents have placed reliance on the Partnership Deed dated 19 October 2019 and submitted that the petitioner is not a party or signatory to that document. This fact is not disputed. Even then, that alone does not end the dispute. The petitioner is not claiming any right under the later deed. Her case is that after the death of her husband, his 25% partnership interest became part of his estate and the legal heirs got rights in that estate. Whether she gets the whole share claimed by her, or only part of it, or whether another legal heir has represented the estate, are all disputed questions. These questions need proper examination before the Arbitral Tribunal. Merely because another partnership deed came to be executed, it cannot be said that the claim of a legal heir has come to an end. If such argument is accepted, then surviving partners may execute another deed after the death of a partner and the rights of remaining legal heirs may stand defeated without any adjudication. Such view cannot be accepted at this stage.

15. The respondents submitted that the partnership firm has no concern with disputes between the legal heirs and that this is only a family dispute. This submission also does not appear acceptable. The petitioner is not only claiming inheritance in general. She is claiming rights in the deceased partner's share in the partnership firm, its assets, accounts and profits. Therefore, these issues directly concern the affairs of the partnership firm. At present, it cannot be said that the dispute is only between family members having no connection with the partnership business. Whether the petitioner succeeds or not is a different matter. As of now, the dispute appears connected with the partnership and its affairs.

16. Much reliance was placed on Clause 16 of the Partnership Deed. According to the respondents, this clause permits the surviving partners to continue the business with or without taking the heir of the deceased partner as partner. Prima facie, the clause does give such liberty. Even then, the clause cannot be read by ignoring the remaining provisions. There is difference between continuation of the partnership business and deciding the rights of legal heirs in the estate of the deceased partner. A clause permitting continuation of business relates to management of the partnership. It does not decide who will get the estate of the deceased partner. Therefore, even if the respondents are correct in saying that they could continue the business, it does not mean that the petitioner has no claim regarding the value of the deceased partner's share, the accounts or the profits. These issues remain open for adjudication.

17. Learned counsel for the petitioner submitted that under Mohammedan law the petitioner is a sharer and has a vested right in the estate of the deceased. This submission appears in line with the principles governing succession under Mohammedan law. Of course, the exact share of the petitioner may depend upon the number of legal heirs and the rules applicable to them. Such exercise cannot be undertaken in a petition under Section 9. At the same time, merely because another legal heir became partner, it cannot be said that the petitioner has no legal interest at all. Succession to the estate is governed by personal law, whereas management of the partnership is governed by the partnership agreement. Both do not always work in the same field. Therefore, at least at this stage, the petitioner appears to have shown a prima facie interest which deserves consideration.

18. Much argument was made regarding the conduct of Respondent No.4. According to the petitioner, he assured her that her rights would be protected. Believing those assurances, she did not start legal proceedings. Afterwards, she came to know that Respondent No.4 became a partner without informing her. The respondents have denied these allegations. At present, there is no sufficient material to record a finding that Respondent No.4 acted dishonestly. Such finding can be recorded only after evidence is led. Even then, the material available on record does show that the petitioner did not immediately challenge the events after the death of her husband. Her explanation is that she relied upon the assurances given by Respondent No.4. Whether this explanation is finally accepted or not is a matter for arbitration. At this stage, it cannot be brushed aside as unbelievable.

19. The respondents also submitted that there is considerable delay in filing the present proceedings. The deceased partner expired in October 2019, whereas arbitration was invoked only in February 2026. Delay is certainly one circumstance which the Court has to keep in mind while considering interim relief. Even then, delay alone is not enough to reject a claim where the alleged rights are continuing. According to the petitioner, she came to know in the year 2025 that Respondent No.4 had become partner. Thereafter, she issued a legal notice and invoked arbitration. Whether this explanation answers the question of limitation or delay is not required to be finally decided in these proceedings. For the purpose of temporary protection, such delay does not destroy the petitioner's prima facie case.

20. Learned counsel for the respondents submitted that income tax returns were not filed because the business remained under the custody of the Court and no business activity was being carried on. Certain documents are also placed on record showing payment of income tax after the Court Receiver released certain amounts. These submissions may explain why income tax returns were not filed for that period. However, they do not answer the grievance of the petitioner regarding disclosure of the accounts and financial affairs of the partnership. When a legal heir claims rights in the estate of a deceased partner, the accounts of the partnership become relevant. Proper disclosure of financial records causes no prejudice to anybody. Rather, it helps in proper adjudication of the disputes.

21. The petitioner has also expressed an apprehension that third party rights may be created in the partnership business or its assets. The respondents have denied such intention. At present, no transaction creating third party rights has been shown before this Court. Even so, the petitioner has pointed out certain circumstances which, according to her, create such apprehension, particularly after the change in the constitution of the partnership and the alleged induction of another person in the business affairs. When disputes regarding ownership, accounts and succession are pending, it is proper to preserve the existing position. If the business or its assets undergo changes during pendency of arbitration, unnecessary complications may arise and those may not be easy to undo later.

22. Taking an overall view of the matter, this Court finds that disputes exist regarding the petitioner's rights in the estate of the deceased partner, the effect of the Partnership Deed dated 19 October 2019, the rights of the parties in the partnership assets and profits, and also regarding continuance of the arbitration agreement. All these issues require detailed examination and cannot be finally decided in proceedings under Section 9. Even so, the petitioner has shown a prima facie case requiring interim protection till the disputes are decided by the Arbitral Tribunal. The balance of convenience also appears in favour of preserving the present position because if changes are permitted in the business or its assets during this period, the situation may become difficult to restore. Such prejudice may not be properly compensated by money. At the same time, if the existing position is maintained, no prejudice is likely to be caused to the respondents because they will still have full opportunity to contest every claim before the Arbitral Tribunal. Therefore, the petition deserves to be partly allowed to the extent necessary for protecting the subject matter of the arbitration till the disputes are finally decided.

23. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

(i) The Arbitration Petition is partly allowed;

(ii) Pending commencement and conclusion of the arbitral proceedings and until the Arbitral Tribunal passes appropriate orders under Section 17 of the Arbitration and Conciliation Act, 1996, whichever is earlier, Respondent Nos.1 to 4, their servants, agents and all persons claiming through or under them, are restrained from selling, transferring, alienating, assigning, creating any third party rights, encumbering, or otherwise dealing with or parting with possession of the immovable property of M/s. Radio Restaurant, or any part thereof, in a manner prejudicial to the petitioner's alleged rights in the estate of Late Mr. Gulam Rasul Suleman Bhuraniya;

(iii) Respondent No.1 shall maintain complete and true accounts of the partnership business and shall preserve all books of accounts, financial statements, bank records, statutory records and other documents relating to the affairs of the partnership firm. The respondents shall not destroy, alter or part with any such records pending the arbitral proceedings;

(iv) Within a period of four weeks from today, Respondent No.1 shall file before this Court and serve upon the petitioner an affidavit disclosing:

(a) the movable and immovable assets of the partnership firm;

(b) particulars of all bank accounts operated by the partnership firm;

(c) the financial statements and Income Tax Returns of the partnership firm from the Assessment Year 2020 to the latest available Assessment Year, if filed;

(d) the details of any transfer, mortgage, lease, licence, development arrangement or creation of any third party interest, if any, in respect of the assets of the partnership firm after 19 October 2019.

(v) The respondents shall not induct any new partner, transfer any partnership interest, or create any third party interest in the business or assets of Respondent No.1 without giving at least two weeks' prior written notice to the petitioner and without obtaining leave of the Arbitral Tribunal after its constitution;

(vi) The prayer seeking deposit of 25% of the profits before this Court is rejected at this stage. The petitioner has not placed sufficient material to enable this Court to determine the actual profits earned by the partnership firm after the death of the deceased partner. However, all accounts shall remain subject to final adjudication by the Arbitral Tribunal;

(vii) The prayer for appointment of a Court Receiver is also rejected at this stage. No material is placed before this Court to show such gross mismanagement, waste or imminent dissipation of the partnership assets as would presently justify displacement of the existing management. Liberty is reserved to the petitioner to apply afresh if subsequent events so warrant;

(viii) The observations made in this order are prima facie in nature and confined to the consideration of interim relief under Section 9 of the Arbitration and Conciliation Act, 1996. The Arbitral Tribunal shall decide all issues uninfluenced by any observations contained herein;

(ix) The petitioner shall take effective steps for commencement of arbitral proceedings in accordance with law within a period of thirty days from today, if not already commenced;

(x) In the event the arbitral proceedings are not commenced within the period stipulated above, the respondents shall be at liberty to apply for modification or vacating of the interim protection granted by this order;

(xi) There shall be no order as to costs.

(xii) All pending Interim Applications, if any, stand disposed of.

(AMIT BORKAR, J.)