

CNR No: PHHC010640892026

2026:PHHC:107122



IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1492 of 2026 (O&M)

Ashok Kumar Dumra

. . . Appellant

VS.

Om Parkash

. . . . Respondent

* * * *

Reserved on: August 04, 2026

Pronounced on: August 06, 2026

Pronounced fully/operative part : Fully

* * * *

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By:- Mr. Mohit, Advocate for the appellant.

DEEPAK GUPTA, J.

The defendant has preferred the present Regular Second Appeal assailing the judgment and decree dated 31.01.2026 passed by the learned Additional District Judge, Panipat, whereby the appeal preferred by the plaintiff was allowed, the judgment and decree dated 03.11.2022 passed by the learned Civil Judge (Senior Division), Panipat, was modified, and a preliminary decree for rendition of accounts of the partnership firm was passed.

2. The plaintiff (respondent herein) instituted a suit seeking dissolution of the partnership firm namely M/s Parkash Textiles, rendition of accounts, recovery of the amount found due on settlement of accounts, partition of the partnership assets and permanent injunction. It was pleaded that the parties constituted a registered partnership firm on 28.12.1992 with equal shares under a partnership at will. According to the plaintiff, although the business of the firm came to a halt in the year 2005 owing to financial losses, the partnership was never dissolved and no settlement of accounts

was ever effected. It was further pleaded that the defendant, being the working partner and custodian of the books of account, failed to render accounts despite repeated demands, compelling the plaintiff to issue a legal notice dated 23.01.2013, dissolving the partnership and thereafter to institute the present suit.

3. The defendant (appellant herein) contested the suit by denying the very existence of the partnership. His principal defence was that M/s Parkash Textiles was his sole proprietorship concern and that the plaintiff had no concern with the business. It was further pleaded that the alleged partnership deed was fabricated; that the account books were in possession of the plaintiff; that the suit was barred by limitation; and that the plaintiff was not entitled to any relief.

4. Upon appreciation of the evidence, the learned Trial Court held that the partnership firm stood established and that it was a partnership at will, which stood dissolved with effect from 23.01.2013 upon service of the legal notice under Section 43 of the Indian Partnership Act, 1932. However, while refusing the relief of rendition of accounts and other consequential reliefs, the Trial Court merely declared the firm to have stood dissolved and directed the plaintiff to pay ad valorem court fee on the amount claimed.

5. Aggrieved thereby, the plaintiff preferred an appeal. The learned first Appellate Court found that once the existence of the partnership firm and its dissolution had been established, the Trial Court had committed a manifest error in refusing the consequential relief of rendition of accounts. The Appellate Court accordingly allowed the appeal, set aside the findings of declining rendition of accounts and directed passing of a preliminary decree for rendition of accounts, leaving the final decree to be drawn after settlement of accounts.

6. Before advertng to the submissions advanced on behalf of the appellant, it deserves to be noticed that the learned first Appellate Court, being the final Court on facts, has re-appreciated the entire oral and documentary evidence and has reversed the Trial Court only on the question

of entitlement to rendition of accounts, while affirming the finding regarding existence of the partnership firm and its dissolution. Unless such findings are shown to be perverse, based on no evidence or arrived at by ignoring material evidence, interference in exercise of jurisdiction under Section 100 CPC would be wholly unwarranted.

7. Assailing the aforesaid judgment, learned counsel appearing on behalf of the appellant-defendant has argued that: (i) the suit itself was hopelessly barred by limitation since the business of the firm admittedly ceased in the year 2005; (ii) the Civil Court lacked jurisdiction in view of the arbitration clause contained in the partnership deed; (iii) the Courts below erred in treating the concern as a partnership firm although it was, in fact, the sole proprietorship concern of the appellant; and (iv) the finding regarding existence of the partnership is vitiated as the original partnership deed was never produced in evidence.

8. I have heard learned counsel for the appellant at considerable length and have carefully perused the judgments passed by both the Courts below as well as the trial court record. In the considered opinion of this Court, none of the submissions advanced on behalf of the appellant gives rise to any substantial question of law within the meaning of Section 100 of the Code of Civil Procedure for the reasons recorded hereinafter.

9. The findings recorded by the first Appellate Court are based upon appreciation of documentary as well as oral evidence and do not suffer from perversity or any misapplication of law warranting interference.

10. The main contention of learned counsel for the appellant is that the suit instituted in the year 2016 was hopelessly barred by limitation as the business of the firm had admittedly ceased in the year 2005. The submission, however, overlooks the distinction between closure of business and dissolution of a partnership firm under the Indian Partnership Act, 1932.

11. Both the Courts below have concurrently found that M/s Parkash Textiles was a partnership at will constituted under the registered partnership deed dated 28.12.1992 and that no deed of dissolution or

settlement of accounts had ever been executed between the parties. The Trial Court specifically held that the partnership stood dissolved only upon service of legal notice dated 23.01.2013 under Section 43 of the Partnership Act, and this finding has attained finality.

12. Merely because commercial activities of the firm had stopped in the year 2005, it cannot be inferred that the partnership itself stood dissolved. A partnership continues until dissolved in one of the modes recognised by the Partnership Act. Closure of business, by itself, neither extinguishes the jural relationship between partners nor brings about settlement of mutual rights and liabilities.

13. Sections 43, 46 and 48 of the Indian Partnership Act clearly recognize that after dissolution, every partner possesses a continuing right to have the assets of the firm applied towards discharge of liabilities and thereafter distributed amongst the partners after rendition of accounts. Until such accounts are settled, the mutual rights inter se remain subsisting.

14. The Supreme Court in ***Guru Nanak Industries, Faridabad and another v. Amar Singh (Dead) through LRs, (2021) 14 SCC 672***, relied upon by the first Appellate Court, has reiterated that in the event of dissolution, accounts have necessarily to be settled in accordance with Section 48 of the Partnership Act.

15. The present suit was not founded merely upon cessation of business but upon the plaintiff's statutory right to seek dissolution and rendition of accounts after issuance of notice under Section 43 of the Partnership Act. Consequently, the plea of limitation based solely on closure of business in 2005 is legally misconceived and has rightly been rejected.

16. The second submission that the suit itself was not maintainable because the partnership deed contained an arbitration clause is equally devoid of merit.

17. *Firstly*, the defendant never invoked Section 8 of the Arbitration and Conciliation Act, 1996 before filing his first statement on the substance

of the dispute. Having submitted to the jurisdiction of the Civil Court, contested the suit on merits, led evidence and suffered a decree, he cannot, for the first time in second appeal, seek reference of the dispute to arbitration.

18. *Secondly*, an arbitration agreement does not automatically oust the jurisdiction of the Civil Court. Unless a party invokes Section 8 of the Arbitration and Conciliation Act at the threshold and satisfies the statutory requirements, the Civil Court continues to retain jurisdiction.

19. The Supreme Court *in Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. and others, (2011) 5 SCC 532, Vidya Drolia and others v. Durga Trading Corporation, (2021) 2 SCC 1, and Sukanya Holdings (Pvt.) Ltd. v. Jayesh H. Pandya and another, (2003) 5 SCC 531*, has consistently held that reference to arbitration is not automatic and the mandate of Section 8 must be invoked before submission of the first statement on the substance of the dispute. Failure to do so constitutes waiver of the contractual right to arbitrate.

20. The record further reveals that no such objection was ever pressed before the Trial Court. On the contrary, the defendant participated in the entire trial on merits. In these circumstances, the plea founded upon the arbitration clause is clearly barred by acquiescence and waiver and cannot be permitted to be raised for the first time in second appeal.

21. Equally untenable is the argument that M/s Parkash Textiles was a sole proprietorship concern of the defendant. The first Appellate Court has recorded detailed reasons for rejecting this defence. The partnership deed stood proved through an independent official witness from Haryana Financial Corporation, who produced the copy of the partnership deed preserved in official records. The documents relating to registration of the partnership firm (Forms A and C), the bank records of Oriental Bank of Commerce and the Haryana Financial Corporation loan documents consistently reflected both parties as partners of the firm.

22. Pointedly, despite taking the plea that the concern was his sole proprietorship, the defendant failed to produce any registration certificate, income-tax record, sales-tax record, bank account or any contemporaneous document showing exclusive ownership of the business.

23. On the contrary, during cross-examination the defendant admitted the existence of books of account but failed to produce them before the Court despite being the person admittedly managing the affairs of the concern. The Appellate Court rightly drew an adverse inference under Section 114 illustration (g) of the Evidence Act, 1872 against the defendant.

24. The finding that the concern was a partnership firm is therefore a pure finding of fact resting upon documentary evidence and cannot be reopened in exercise of jurisdiction under Section 100 CPC.

25. The last submission that the original partnership deed was not produced also deserves rejection. The first Appellate Court has noticed that the original partnership deed had been deposited with the Haryana Financial Corporation while availing financial assistance and its copy preserved in official custody was produced through PW-3. The execution and existence of the document stood corroborated by the statutory records of the Registrar of Firms, bank documents and other official records.

26. Under Sections 63 and 65 of the Indian Evidence Act, secondary evidence is admissible, where the original is shown to be in custody of another person or institution and its production is otherwise accounted for. Once the document is proved through lawful secondary evidence supported by official records, mere non-production of the original does not render the document inadmissible.

27. More importantly, the defendant never established that the copy produced before the Court was fabricated or materially different from the original. In absence of any challenge to its authenticity, the objection regarding non-production of the original loses all significance.

28. The Appellate Court has also correctly noticed that the defendant’s denial of the partnership was contradicted by official records from the Bank and the Haryana Financial Corporation, which independently established the existence of the partnership firm and the participation of both parties therein.

29. The jurisdiction of this Court under Section 100 CPC is confined to substantial questions of law. Reappreciation of evidence or substitution of factual conclusions is impermissible unless the findings are shown to be perverse, based on no evidence or arrived at by ignoring material evidence. The findings returned by the first Appellate Court satisfy none of these tests. Rather, they are founded upon admissible documentary evidence and correct application of the provisions of the Partnership Act.

30. Accordingly, none of the grounds urged by the appellant gives rise to any substantial question of law. The appeal is, therefore, dismissed. The judgment and decree passed by the learned first Appellate Court, directing rendition of accounts after holding the partnership to have stood dissolved by notice under Section 43 of the Indian Partnership Act, call for no interference.

31. Pending application(s), if any, shall also stand disposed of.

August 06, 2026
Sarita

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	:	Yes/No
Whether reportable?	:	Yes/No

Uploaded on: August 06, 2026