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

COMM ARBITRATION APPLICATION (L) NO.15107 OF 2026

Vinod Kumar Saraf ... Applicant

Vs.

1. Villayati Ram Mittal
2. Surinder Kumar Mittal ... Respondents

Mr. Mayur Khandeparkar with Mr. Anand R. Pai, Mr. Sachin Mhatre, Mr. Yogesh Naidu, Ms. Smriti Sajeev, Ms. Lavanya Panicker, and Mr. Sarvesh Sawant i/by Mhatre Law Associates for the applicant.

Mr. Simil Purohit, Senior Advocate with Mr. Rashmin Khandekar and Ms. Akshata Modi i/by Mr. Mohit Sant for the respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 13, 2026.

PRONOUNCED ON : AUGUST 18, 2026

JUDGMENT:

1. By this Arbitration Application filed under Section 11 of the Arbitration and Conciliation Act, 1996, referred to as “the said Act”, the Applicant seeks appointment of an Arbitrator for deciding the disputes and differences arising out of the Partnership Deed dated 16 April 2014. The said Partnership Deed was executed between the Applicant, Mr. Vinod Kumar Saraf, who claims to hold

5% share, and Respondent No. 2, Mr. Surinder Kumar Mittal, who claims to hold 95% share, in the registered partnership firm known as “M/s Villayati Ram Mittal”, bearing Registration No. 1749/79.

2. According to the Applicant, the facts leading to the filing of the present Application are as follows. Respondent No. 1 firm, M/s Villayati Ram Mittal, was originally registered with the Registrar of Firms, New Delhi, on 7 June 1979 under Registration No. 1749/79. The Applicant states that he was associated with the business of the firm since 1983. In the year 2001, the Applicant shifted with his family from Delhi to Mumbai and took possession of the partnership premises, namely Flats A-502 and A-104, together with parking space, at Krishna Regency, Vakola, Santacruz (East), Mumbai, and Flat C-42 at Park Avenue, Andheri (West), Mumbai. On 27 February 2014, a Joint Declaration was made by Late Shri Villayati Ram Mittal and Shri Inder Pal Mittal stating that they would retire from the firm with effect from 31 March 2014. Thereafter, a reconstituted Partnership Deed was executed on 16 April 2014 between the Applicant, holding 5% share, and Respondent No. 2, holding 95% share. The said Partnership Deed contains Arbitration Clause 16. On 20 May 2014, Respondent No. 2 filed Form V recording the retirement of the outgoing partners and the entry of the Applicant as a partner. On 26 September 2017, fresh affidavits were executed by Late Shri Villayati Ram Mittal and Shri Inder Pal Mittal again confirming the reconstitution of the firm.

3. On 26 September 2017, another Form V was filed recording the change in the constitution of the firm and bearing signatures of the concerned parties. Form C was thereafter issued by the Registrar of Firms showing the Applicant as an incoming partner. On the same day, Respondent No. 2 informed the Registrar of Firms about the Branch Office at Krishna Regency, Vashi, Navi Mumbai. Shri Villayati Ram Mittal, who was the founder of the firm, expired on 7 December 2024.

4. The Applicant alleges that on 13 December 2024, Respondent No. 2 filed a fraudulent Form V falsely showing that the Applicant had retired from the firm and that Respondent No. 2's wife, Mrs. Asha Mittal, and his sons, Gobind Mittal and Gopal Mittal, had been inducted as new partners. According to the Applicant, no Retirement Deed was executed by him and no amount was paid to him towards his share in the partnership. On 14 December 2024, a purported reconstituted Partnership Deed was executed by Respondent No. 2 with his immediate family members. The Applicant further alleges that on 18 February 2025, an Indemnity Bond and an Affidavit were shown as having been executed by him, though, according to him, the said documents are forged. He points out that his name is spelt therein as “Vinod Kishan Saraf”, that the stamp paper was purchased by Respondent No. 2 and that the documents were notarised in Delhi. According to the Applicant, these documents were prepared after the alleged reconstitution of the firm and this itself shows fabrication. On 25 March 2025, Form C was issued by the Registrar of Firms recording the Applicant as an outgoing partner, though his name was again incorrectly spelt.

5. On 2 April 2025, the Applicant filed an application under the Right to Information Act seeking inspection of the relevant records. On 16 April 2025, the Public Information Officer communicated permission to inspect the records. According to the Applicant, it was only on 6 February 2026, when he inspected the records of the Registrar of Firms at Delhi, that he came to know about the alleged fraudulent filings. On 7 March 2026, the Applicant issued a notice invoking arbitration under Clause 16 of the Partnership Deed and issued a Notice of Dissolution. On 11 March 2026, Respondent No. 2 issued an eviction notice calling upon the Applicant to vacate the premises within seven days. According to the Applicant, this notice was issued as a retaliatory measure. On 16 March 2026, Respondent No. 2 replied to the notice invoking arbitration. In that reply, Respondent No. 2 denied that the Applicant was a partner and claimed that he was only an employee. According to the Applicant, the invocation of arbitration was not acted upon. The Applicant replied to the eviction notice on 17 March 2026.

6. Thereafter, the Respondents filed three eviction suits, being LE Suit Nos. 23, 24 and 25 of 2026, before the Small Causes Court, Mumbai under Section 41 of the Presidency Small Cause Courts Act. According to the Applicant, while filing these suits, the Respondents suppressed the Partnership Deed dated 16 April 2014 and the arbitration clause contained therein. The suits were served upon the Applicant on 4 April 2026. The Applicant thereafter filed Commercial Arbitration Petition (L) No. 13434 of 2026 under Section 9 of the Arbitration and Conciliation Act, 1996. It is in these circumstances that the present Application under Section 11 of the said Act has been filed.

7. Mr. Khandeparkar, learned Advocate appearing for the Applicant, submits that the disputes between the Applicant and the Respondents arise out of and are connected with the Partnership Deed dated 16 April 2014. According to him, the said Partnership Deed contains a valid, binding and enforceable arbitration agreement in the form of Clause 16. He, therefore, submits that the present Application is maintainable. According to the learned Advocate, the Applicant validly invoked arbitration by notice dated 7 March 2026 under Section 21 of the said Act. The period of 30 days for the parties to agree upon the appointment of an Arbitrator has expired.

8. Mr. Khandeparkar submits that the arbitration clause does not provide any procedure for appointment of an Arbitrator. Since the parties have failed to agree upon the appointment, a Sole Arbitrator is required to be appointed by this Court under Section 11 of the said Act. He submits that the denial by the Respondents of the Applicant's status as a partner cannot be a reason to refuse appointment of an Arbitrator. According to him, at the stage of considering an application under Section 11, this Court is required only to examine whether an arbitration agreement prima facie exists. The question whether the partnership itself continues to exist and whether the Applicant continues to be a partner are matters to be decided by the Arbitral Tribunal. He submits that the Partnership Deed dated 16 April 2014, bearing the signatures of the Applicant and Respondent No. 2, is an undisputed document on record. Therefore, according to him, this Court is not required at this stage to decide disputed questions of fact but only to examine whether an arbitration agreement exists.

9. Inviting my attention to Section 42 of the said Act, Mr. Khandeparkar submits that the object of Section 42 is to avoid conflict between different Courts by ensuring that supervisory jurisdiction over all proceedings arising from the same arbitration remains with one Court. In support of this submission, he relies upon the judgment of the Supreme Court in *BBR (India) Private Limited vs. S.P. Singla Constructions Private Limited*, Civil Appeal Nos. 4130-4131 of 2022, decided on 18 May 2022, particularly paragraphs 30 and 31. According to him, where the parties have not agreed upon the seat of arbitration, an application under Section 9 can be filed before a Court within whose jurisdiction a part of the cause of action has arisen. He submits that this position applies before the seat of arbitration is determined under Section 20(2) of the said Act. According to him, paragraph 31 of the said judgment holds that an application under Section 9 may be filed before a Court where part of the cause of action arises, where there is no agreement between the parties fixing the seat of arbitration.

10. Mr. Khandeparkar invited my attention to Section 2(1)(e) of the said Act. According to him, this Court, while exercising its ordinary original civil jurisdiction, is a “Court” for deciding questions forming the subject matter of the arbitration, if such questions could have been the subject matter of a suit before this Court. He further relies upon the judgment of the Division Bench of this Court in *Gurumahima Heights Cooperative Housing Society*

Limited vs. Admirecon Infrastructure Pvt. Ltd., 2023 SCC OnLine Bom 2703. He submits that in that matter, an application under Section 9 was entertained by the Court at Thane. In paragraph 50 of the judgment, the Division Bench held that since an application relating to the arbitration agreement had been made before the Principal District Judge, Thane, and the order passed by that Court had never been challenged, only the Principal District Court, Thane would have jurisdiction to entertain and decide the subsequent Commercial Arbitration Petition arising out of the same arbitral proceedings. According to the learned Advocate, the said judgment supports the submission that once a competent Court has been approached in connection with the arbitration, the subsequent proceedings arising from the same arbitration should remain before that Court.

11. Mr. Khandeparkar seeks to distinguish the judgment of the Supreme Court in *State of West Bengal & Others vs. Associated Contractors*, (2015) 1 SCC 32. He submits that the conclusions in paragraph 25 of that judgment were rendered while considering the legal position before the amendment made to Section 11(6) in the year 2015. However, he submits that the principle stated in paragraph 25(d) is applicable to the present case. According to him, the Supreme Court has held that an application under Section 9 and an application under Section 34 for setting aside an arbitral award are applications covered by Section 42 of the said Act. He invited my attention to paragraphs 73 and 75 of the order passed by this Court in the proceedings under Section 9 between the same parties. According to him, this Court had recorded a finding that the Applicant had shown the existence of material facts constituting a substantial part of the cause of action within the territorial jurisdiction of this Court. He, therefore, submits that this Court, while exercising its ordinary original civil jurisdiction, has the jurisdiction to appoint an Arbitrator.

12. Mr. Simil Purohit, learned Advocate appearing for the Respondents, submits that by the present Application under Section 11 of the said Act, the Applicant seeks appointment of a Sole Arbitrator for deciding disputes which are said to arise out of the Partnership Deed dated 16 April 2014. He submits that the Applicant claims to have a 5% share in Respondent No. 1 firm, whereas Respondent No. 2 holds 95% share and is in control of the management, accounts, and records of the firm.

13. Mr. Purohit submits that the Applicant has filed an Additional Affidavit placing on record the order dated 14 July 2026 passed in the connected Section 9 proceedings, namely Commercial Arbitration Petition (L) No. 13434 of 2026. According to the Applicant, the said order is a "highly persuasive" circumstance and attracts the provisions of Section 42 of the said Act. Mr. Purohit, however, submits that the Applicant has incorrectly understood the said order. According to him, the findings in the Section 9 order were based upon the nature of the reliefs sought in those proceedings, particularly the reliefs concerning possession and eviction from the premises. He submits that such reliefs are not sought in the present Application under Section 11. According to him, on the issues which are required to be considered by a Court under Section 11, the said order is either silent, expressly leaves the issue open, or supports the case of the Respondents.

14. Mr. Purohit submits that the only dispute which can be referred to arbitration is the dispute regarding dissolution of the partnership and rendition of accounts. According to him, the Partnership Deed and the order passed in the Section 9 proceedings show that the proper place connected with such disputes is New Delhi. He submits that the present Application, therefore, ought to have been filed before the Delhi High Court and not before this Court.

15. Mr. Purohit, learned Advocate appearing for the Respondents, submits that the only dispute which can be referred to arbitration is regarding dissolution of the partnership and rendition of accounts. According to him, the Partnership Deed as well as the order passed by this Court in the proceedings under Section 9 show that New Delhi is the place having direct and substantial connection with these disputes. He submits that, therefore, the present Application ought to have been filed before the Delhi High Court and not before this Court.

16. Mr. Purohit submits that the case of the Applicant, in short, is that the petition filed under Section 9 was the application under Part I of the Arbitration and Conciliation Act, 1996 and, therefore, by virtue of Section 42, this Court alone has exclusive jurisdiction to entertain all subsequent proceedings arising out of the arbitration agreement. According to the Applicant, even otherwise, this Court has territorial jurisdiction because the Firm has a branch office and GST principal place of business at Vashi, the partnership premises are situated in Mumbai, business activities were carried on from Mumbai under Clause 5 of the Partnership Deed, and the Respondents themselves have approached the Courts in Mumbai by filing the eviction suits. The Applicant contends that Mumbai should be treated as the seat or venue of arbitration and that this Court should exercise exclusive supervisory jurisdiction over the arbitral proceedings.

17. Mr. Purohit submits that none of these submissions can be accepted, and the present Application deserves to be rejected. He submits that the Applicant's reliance upon Section 42 is misconceived because an application under Section 11 is not an application made to a “Court” as defined under Section 2(1)(e) of the said Act. According to him, Section 42 is, therefore, not attracted to a proceeding under Section 11. He further submits that, merely because this Court entertained the petition filed by the Applicant under Section 9, the present application under Section 11 does not become maintainable before this Court. According to him, the competent forum for a Section 11 application has to be decided on the basis of the jurisdictional facts relevant to the relief sought in the present proceedings.

18. He submits that the Partnership Deed does not prescribe either the seat or the venue of arbitration. Therefore, according to him, the Court has to identify the material facts which constitute the cause of action for the relief sought in the present Application. Mr. Purohit submits that the real dispute proposed to be referred to arbitration concerns dissolution of the partnership and rendition of accounts. The registered office of the Firm is at New Delhi and, according to the Partnership Deed, the books of account are maintained there. He, therefore, submits that the Delhi High Court is the competent Court for entertaining the application under Section 11(6).

19. Mr. Purohit further submits that jurisdiction cannot be created by consent, conduct or by unilateral acts of the parties. According to him, the filing of eviction suits by the Respondents before the Small Causes Court at Mumbai cannot amount to any submission that this Court has territorial jurisdiction over the present arbitration dispute. He submits that the order passed by this Court in the Section 9 proceedings does not assist the Applicant because that order was based upon the possession and anti-eviction reliefs sought in relation to the premises situated in Mumbai. According to him, the questions concerning the seat of arbitration and territorial jurisdiction for the present Section 11 Application were either left open or were not finally decided in that order. He submits that the Section 9 order, in fact, accepts that the dispute relating to dissolution and rendition of accounts has a close connection with New Delhi.

20. Mr. Purohit submits that the Applicant's argument based upon Section 42 is, therefore, fundamentally incorrect and, in any event, Section 42 does not compel the present Application to remain before this Court. According to him, the power under Section 11(6) is exercised by the High Court as the authority empowered to appoint an arbitrator. It is not exercised by a "Court" within the meaning of Section 2(1)(e) of the said Act.

Therefore, according to him, an application under Section 11 is not an application “made to a Court” for the purpose of Section 42.

21. He submits that this position continues even after the amendment made to Section 11 in the year 2015. Though the expression “Chief Justice or his designate” was substituted by the expression "the High Court", according to Mr. Purohit, the essential nature of proceedings under Section 11 remains the same. It continues to be an application before the authority empowered to appoint an arbitrator and not an application made to a “Court” as defined under Section 2(1)(e). He, therefore, submits that Section 42 is not attracted merely because an earlier application under Section 9 was entertained by this Court.

22. Mr. Purohit further submits that, even assuming that the Section 9 petition was entertained by this Court, that fact by itself does not decide the competent forum for the present Section 11 Application. According to him, the question as to which High Court has jurisdiction under Section 11 has to be decided by examining the nature of the dispute and the material facts giving rise to the claim proposed to be referred to arbitration.

23. Mr. Purohit submits that the Partnership Deed does not provide for any seat or venue of arbitration. According to him, Clause 16 merely provides that disputes between the parties “shall be referred to Arbitration as per Arbitration Act”. He submits that this clause does not identify any particular city or place either as the juridical seat or as the venue of arbitration. He submits that the reliance placed by the Applicant upon Clause 5 and the business activities carried out from Mumbai is misplaced. According to him, the business operations of the Firm may change depending upon the projects undertaken by it. Such an operational place, according to him, cannot by itself become the seat of arbitration. He submits that the seat must be identifiable with certainty and cannot be a floating, vague or changing place depending upon the place where the business may be carried on from time to time.

24. According to Mr. Purohit, the present dispute is essentially a partnership dispute concerning dissolution and accounts. In such a matter, the place where the books of account are maintained has a direct connection with the dispute. He submits that the Partnership Deed itself records that the registered office of the Firm is at New Delhi. It further provides that proper books of account "shall be maintained ... and... kept at the registered office". According to him, since the registered office and the books of account are at New Delhi, the dispute regarding settlement of partnership rights and rendition of accounts has its substantial connection with New Delhi.

25. Mr. Purohit submits that where the arbitration agreement does not fix either the seat or the venue, territorial jurisdiction for a Section 11 application has to be determined by identifying the material facts which form the foundation of the relief sought. According to him, the test is not whether some facts connected with the parties or their business can be shown to have occurred within the territorial jurisdiction of a particular Court. The Court must examine whether the facts relied upon have a real and direct nexus with the dispute which is proposed to be referred to arbitration.

26. He submits that this is the settled test for determining territorial jurisdiction. Only those facts which are necessary for obtaining the relief form part of the cause of action. Every fact mentioned by a party does not become a part of the cause of action. Facts which are merely incidental or which do not have a real connection with the dispute cannot confer territorial jurisdiction upon a Court.

27. According to Mr. Purohit, when this test is applied to the present matter, the material foundation of the proposed arbitration is only the claim for dissolution of the Firm and rendition of accounts. He submits that this is clear even from the notice invoking arbitration issued by the Applicant. The Applicant, according to him, sought dissolution of the Firm, settlement of the rights of the partners and taking of accounts. The Applicant called upon Respondent No. 2 to agree to appointment of an Arbitrator. The notice proceeds on the basis that the Applicant continues to be a partner and seeks determination of the value of his share after dissolution and settlement of accounts.

28. Mr. Purohit, therefore, submits that the ultimate relief which may be granted by the Arbitral Tribunal would concern dissolution of the partnership and rendition of accounts. According to him, the Court having a direct and substantial nexus with such a dispute is the Court at New Delhi, where the registered office of the Firm and its books of account are situated. He relies upon the Applicant's own pleadings wherein the Applicant states that "the cause of action for invoking arbitration and filing the present Application arose … upon inspection of records at the office of the Registrar of Firms, Delhi". According to Mr. Purohit, even on the Applicant's own case, an important part of the cause of action concerning the partnership dispute arose at Delhi.

29. Mr. Purohit further submits that, while deciding the application under Section 9, this Court has considered the nature of the underlying dispute and has prima facie found that the dispute concerns dissolution of the partnership and rendition of accounts, which has a close connection with New Delhi. He submits that the Respondents had pointed out in the Section 9 proceedings that the registered office of the Firm and its books of account are situated at Delhi and that the real controversy concerns dissolution and accounts. According to him, this Court recorded that "… the dispute concerns settlement of partnership rights and accounts. Prima facie, there is force in this submission". He submits that the order recognised the principle that "… the principles laid down in Ratan Lalchandani support the respondents to the extent that disputes concerning dissolution and rendition of accounts have close connection with the place where the accounts are maintained".

30. According to Mr. Purohit, the order under Section 9 applied the correct jurisdictional test by observing that "what is required is identification of material facts which constitute the foundation of the relief sought" and that the Court is required to "separate material facts from incidental facts". He submits that the reason why this Court could entertain the Section 9 petition was because that petition contained reliefs concerning possession of the Mumbai premises and protection against eviction. Those reliefs had a direct connection with Mumbai. He submits that those possession and anti-eviction reliefs do not form part of the present Application under Section 11. Once those reliefs are removed from consideration, according to him, the facts concerning Mumbai become merely incidental. The material facts concerning the dispute which remains for arbitration are the alleged retirement of the Applicant, the settlement or non-settlement of partnership accounts and the state of the books and records of the Firm. According to Mr. Purohit, these matters have their direct connection with New Delhi.

31. Mr. Purohit submits that the settled authorities relating to territorial jurisdiction support the conclusion that New Delhi is the proper place for a dispute concerning dissolution of the partnership and rendition of accounts. According to him, in a dispute relating to partnership accounts, the cause of action substantially arises at the established place of business where the books of account are maintained and where the accounts are required to be examined and the balance between the partners is to be determined. He further submits that a partner does not have an independent proprietary right in any particular asset belonging to the Firm during the subsistence of the partnership. The interest of a partner is movable in nature and the partner is entitled to his share in the value remaining after settlement of the partnership accounts. Therefore, according to him, the mere fact that some immovable properties of the Firm are situated in Mumbai cannot by itself determine the territorial jurisdiction for a dispute concerning dissolution and rendition of accounts.

32. Mr. Purohit submits that the mere existence of a branch office or a place of business within the territorial limits of a Court does not confer jurisdiction upon that Court. There must be some part of the cause of action arising at that place. According to him, unless the facts giving rise to the claim for dissolution and accounts have a real connection with the branch office at Vashi or with Mumbai, the existence of such office cannot create territorial jurisdiction. Similarly, according to Mr. Purohit, the existence of a registered office or branch office, by itself, does not constitute a cause of action. What is required is a material fact having a direct nexus with the dispute and the relief sought. On this basis, he submits that the facts relied upon by the Applicant concerning Mumbai do not form the material foundation of the present arbitration dispute, whereas the registered office, the books of account and the settlement of partnership accounts have a direct and substantial connection with New Delhi. He, therefore, submits that the present Application is not maintainable before this Court and ought to have been filed before the Delhi High Court.

REASONS AND ANALYSIS:

33. I have considered the submissions made by Mr. Khandeparkar for the Applicant and Mr. Purohit for the Respondents. I have gone through the Partnership Deed relied upon by the Applicant, the notice dated 7 March 2026 by which arbitration was invoked, the dissolution notice and the judgments relied upon by both sides.

34. The legal position in this regard is now fairly settled by the Supreme Court in *Ajay Madhusudan Patel v. Jyotrindra S. Patel,* (2025) 2 SCC 147. While considering an application under Section 11, the enquiry before the Court is limited in nature. At this stage, the Court is not expected to enter into detailed examination of disputed questions of fact as if the whole dispute is required to be finally decided. In paragraph 76.2, the Supreme Court has explained as follows:

> "The insertion of Section 11(6-A) through the 2015 Amendment to the 1996 Act stipulated that the courts under Section 11 shall confine their examination to the "existence" of an arbitration agreement."

35. Thus, after insertion of Section 11(6-A), the enquiry of the Court is confined to see whether an arbitration agreement exists between the parties. The Court, at this stage, is not required to decide all disputes which may arise between the parties regarding their respective rights and obligations.

36. Further, in paragraph 76.3, it is stated:

> "Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , in clear terms, clarified the effect of the change brought in by Section 11(6-A) and stated that all that the courts need to see is whether an arbitration agreement exists — nothing more, nothing less."

37. The above principle makes the position clear that while exercising jurisdiction under Section 11, this Court is not expected to make a detailed enquiry as if the entire dispute between the parties is being finally decided here itself. The main question is regarding existence of an arbitration agreement. Other serious factual disputes, particularly those requiring oral evidence or detailed consideration of documents, cannot be finally decided at such stage. The principle is further explained in paragraph 76.4, where it is stated that in cases involving "debatable and disputable facts and reasonably good arguable case", the Court may refer the parties to arbitration, since the Arbitral Tribunal has authority to decide the disputes, including questions relating to its own jurisdiction. Paragraph 76.5 further clarifies that substantive objections regarding existence and validity, which depend upon appreciation of evidence, should be left for consideration before the Arbitral Tribunal.

38. Paragraph 76.6 of *Ajay Madhusudan Patel*, states that a detailed examination by the Court at the stage of Section 11 may result in the Court entering into the domain of the Arbitral Tribunal. It may also leave a claimant remediless if the Section 11 Application is rejected on questions which, in fact, require proper adjudication on the basis of evidence. The object of proceedings under Section 11 is not to finally decide each and every disputed question of fact between the parties.

39. Applying the aforesaid principles to the present matter, this Court cannot, at this stage, finally decide whether the Applicant had in fact retired from the Firm or not. Similarly, this Court cannot finally record a finding regarding whether the disputed Form V, Indemnity Bond or Affidavit are genuine documents, whether any of these documents have been forged, whether the Applicant continues to be a partner of the Firm, or whether the Applicant is entitled to claim any share in the profits and assets of the Firm. These questions are seriously disputed between the parties. Their proper consideration would require evidence. The circumstances in which the documents were allegedly executed, their genuineness, authenticity and legal effect, as also the rights and obligations arising from the alleged partnership relationship, may have to be established by the parties on the basis of material and evidence which may be produced before the appropriate forum. Such disputed questions cannot be concluded merely on the basis of assertions made by the parties in a proceeding under Section 11. The invocation notice indicates that these questions form the basis of the disputes which the Applicant seeks to refer to arbitration. Therefore, if this Court finds that an arbitration agreement exists and the disputes raised by the Applicant arise out of, or are connected with, the rights and obligations arising from such relationship, these disputed questions of fact cannot be finally adjudicated in the present proceedings under Section 11.

40. The questions before this Court are whether, prima facie, there is an arbitration agreement which can be acted upon, and whether this Court has jurisdiction to entertain the present application under Section 11 of the Arbitration and Conciliation Act, 1996.

41. The question is regarding existence of arbitration agreement. The Applicant relies upon the Partnership Deed dated 16 April 2014 and particularly Clause 16 thereof. The Clause reads:

> "That in case of any dispute or difference which may arise between the Partners, the same, shall be referred: to Arbitration as per the Arbitration Act."

42. The document placed on record contains Clause 16 in substantially same terms. The notice invoking arbitration states that the Applicant "hereby invokes the Arbitration Clause 16, contained in the Revised Partnership Deed effective 31.03.2014" and calls upon the Respondents to agree upon appointment of a Sole Arbitrator. Therefore, at least for the limited purpose of Section 11, there is sufficient prima facie material to show that an arbitration agreement exists between the parties.

43. The Respondents do not seriously dispute existence of the arbitration clause. Their main objection is that the present application is filed before a wrong Court. Thus, the question is regarding territorial jurisdiction. Mr. Purohit has placed reliance upon Section 42 of the said Act and submits that since earlier proceedings under Section 9 were filed before this Court, the jurisdictional position is governed by consequences arising from those proceedings. In my view Section 42 cannot be applied in such broad manner as suggested by the Respondents, without examining the nature of jurisdiction exercised under Section 11.

44. Section 42 applies where, "with respect to an arbitration agreement any application under this Part has been made in a Court". Meaning of the expression "Court" is provided in Section 2(1)(e). The decision of the Supreme Court in *Associated Contractors* is important on this issue. In paragraph 25(c), the Supreme Court held that applications under Section 11, as law then stood, did not attract Section 42 because such applications were made to the Chief Justice or his designate and not to a "Court" within meaning of Section 2(1)(e). Paragraph 25(d) records:

> "Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42."

45. Therefore, the Respondents are correct to the extent that an application under Section 9 is an application made to a Court and Section 42 is intended to avoid conflict in supervisory jurisdiction. However, difficulty comes when the authority exercising jurisdiction under Section 11 is treated as same with a "Court" contemplated by Section 2(1)(e). The effect of 2015 amendment on this aspect was considered by this Court in *Afcons Infrastructure Ltd. v. Konkan Railway Corporation Ltd.,* 2020 SCC OnLine Bom 681.

46. In paragraph 19 of Afcons Infrastructure, this Court considered the legislative change brought by the 2015 amendment and held:

> "This legislative change, however, does not seem to have any bearing upon the well recognized proposition that the bar under section 42 of the Act does not apply to the authority which is vested with the power to appoint Arbitrator under section 11 of the Act, 1996. It is plain that the Supreme Court or High Court or its delegate while exercising power under section 11 of the Act cannot be equated with the "Court" contemplated by section 42 of the Act, 1996 which has a definite and exhaustive meaning under section 2(1)(e) of the Act, 1996."

47. This proposition answers the argument that merely because an earlier proceeding under Section 9 was filed before a particular Court, the authority exercising jurisdiction under Section 11 must be treated as exercising jurisdiction under Section 42. In paragraph 20 of *Afcons Infrastructure*, this Court referred to *Khazana Projects and Industries Pvt. Ltd. v. Indian Oil Corporation Ltd.,* 2019 SCC Online Cal 2203 and noted the principle that Section 42 is not attracted merely because an application under Section 11 has been filed before a particular High Court. Thus, distinction has to be kept in mind. A Court exercising jurisdiction under Section 9 or Section 34 exercises jurisdiction as a "Court" within Section 2(1)(e). The High Court exercising power under Section 11 stands on a different statutory footing.

48. The subsequent decision of the Supreme Court in BBR (India) (P) Ltd. does not arrive at a different conclusion. That judgment holds importance of Section 20 and distinction between juridical "seat" and a mere "venue" of arbitration. In paragraphs 15 to 18, the Supreme Court held that concept of "seat" identifies the legal centre of arbitration and the Court which exercises supervisory jurisdiction over the arbitral process. Paragraph 16 states that expression "subject-matter of the arbitration" in Section 2(1)(e) is to be understood in context of identifying the Court having supervisory control over the arbitral proceedings.

49. *BBR* holds that position can be different where parties have not agreed upon a seat. The Supreme Court, while referring to *BGS SGS Soma JV v. NHPC Ltd.,* (2020) 4 SCC 310, holds that where no seat has been agreed or where stated place is only a convenient venue. In such cases, the place where cause of action has arisen may become relevant. Paragraph 59 of *BGS SGS Soma*, which was relied upon before this Court, holds that where parties have not agreed upon a seat and seat has not yet been determined under Section 20(2), an application under Section 9 before a competent Court where part of cause of action arises may attract Section 42. However, this principle concerning Section 42 cannot be mixed with the separate inquiry required while exercising jurisdiction under Section 11. The fact that a Section 9 application may fall within Section 42 does not mean that the High Court considering a Section 11 application is relieved from examining whether it otherwise has jurisdiction under statutory scheme. In my view, *Afcons Infrastructure* answers this part of Respondents' objection. Section 42 governs subsequent applications made to a "Court" within meaning of Section 2(1)(e). It does not convert the authority exercising power under Section 11 into such a Court.

50. The next question is whether this Court has jurisdiction to entertain the present Section 11 application. On this question, absence of any fixed seat in the arbitration clause becomes important. Clause 16 merely provides that disputes between partners:

> "shall be referred: to Arbitration as per the Arbitration Act".

51. It does not say that Mumbai, New Delhi, Navi Mumbai or any other place shall be the seat of arbitration. The later document placed on record does not show any concluded agreement fixing a particular juridical seat.

52. The notice dated 7 March 2026 invoking arbitration does not establish that parties had earlier agreed that Mumbai would be the juridical seat. The Applicant invokes Clause 16 and calls upon the Respondents to agree upon a Sole Arbitrator. The notice further requests confirmation that the "Arbitration Proceedings" are to be conducted at Mumbai. This is an assertion and proposal made by the Applicant while invoking arbitration. It does not show any concluded agreement between both sides fixing Mumbai as juridical seat.

53. I am, therefore, unable to accept the Applicant's submission that Mumbai stands designated as the seat of arbitration by agreement. At this stage, there is no material showing that the Respondents agreed to Mumbai as juridical seat. A unilateral statement in an invocation notice cannot become a contractual term merely because it is made while invoking the arbitration clause. Distinction between the place where hearings may take place and the juridical seat has to be maintained.

54. Rejection of the Applicant's contention regarding agreed Mumbai seat does not conclude the jurisdictional issue in favour of the Respondents. It only means that the Court has to examine the real territorial connection of the dispute and the material facts which constitute the cause of action.

55. Mr. Purohit submits that the real dispute concerns dissolution and rendition of accounts. According to him, registered office of the firm and place where books of account are maintained should therefore be treated as principal connecting factors.

56. Controversy disclosed in the arbitration notice cannot be reduced only to a simple claim for accounts. The Applicant's arbitration notice is wider. The Applicant asserts that he continues to be a lawful partner. He challenges Form V dated 13 December 2024. He alleges that the Indemnity Bond and Affidavit dated 18 February 2025 are forged. He claims entitlement to his 5% share and to true and proper accounts. He raises allegations concerning fraudulent misrepresentation. The notice invokes arbitration "in view of the above disputes" and seeks appointment of a Sole Arbitrator. It would not be proper at the Section 11 stage to treat the entire controversy as consisting only of rendition of accounts after an admitted and valid dissolution. Whether the Applicant was validly retired, whether Form V was properly filed, whether later documents legally altered constitution of the firm, whether the Applicant continues to possess a 5% interest, and what accounts, if any, are payable to him, are all connected disputes arising from the partnership relationship and alleged subsequent reconstitution.

57. The Respondents rely upon the registered office at New Delhi and the fact that books of account are maintained there. This submission is supported, prima facie, by partnership documents placed on record. The deed records that the registered office is situated at F-345, Kotla Mubarakpur, New Delhi. It provides that proper books of account are to be maintained and kept at the registered office. Even the arbitration notice acknowledges that the firm has its registered office at New Delhi. These facts show substantial connection between the dispute and New Delhi. A substantial part of records relating to constitution of the firm and its accounts appears to be maintained there. The material shows that the Applicant approached the Registrar of Firms at New Delhi through RTI application and thereafter inspected firm's records there. According to the Applicant, it was during this process that he discovered the impugned Form V and other documents. Therefore, the Respondents are justified in submitting that New Delhi has a close nexus with the controversy.

58. Yet, that is not the end of inquiry. Same material shows that the dispute is not confined to New Delhi. The invocation notice refers to a branch office at Krishna Regency, Vashi, Navi Mumbai, apart from registered office at New Delhi. The Applicant asserts that he shifted his family from Delhi to Mumbai, took over Mumbai operations of the firm and participated in its construction and real estate activities in Mumbai. He refers to properties situated in Mumbai, including flats at Park Avenue, Andheri (West) and Krishna Regency, Vakola, which according to him continued in his possession as part of his asserted partnership entitlement.

59. The immediate dispute which resulted in earlier Section 9 proceedings and the present Section 11 application includes claims concerning those Mumbai premises. The Applicant alleges that his possession is connected with his partnership entitlement and that, after the alleged fraudulent change in constitution of the firm, efforts were made to displace him from those premises. Subsequent eviction proceedings were instituted in Mumbai. Therefore, Mumbai connection cannot be ignored as unrelated to the dispute.

60. The principle relied upon by the Respondents from *Engineering Projects (India) Ltd.* is that jurisdiction cannot be created by relying upon some unrelated event occurring within a particular territory. The principle, while referring to *Oil and Natural Gas Commission v. Utpal Kumar Basu,* (1994) 4 SCC 711 and *Union of India v. Adani Export Ltd.,* (2002) 1 SCC 567, requires the Court to examine whether the facts relied upon have substantial nexus with the dispute. That principle requires Court to separate material facts from merely incidental facts. Applying that test, I am unable to hold that all Mumbai facts are merely incidental. The Applicant's asserted partnership entitlements include his claimed possession and control of identified premises in Mumbai. His assertion that he was associated with Mumbai operations of the firm forms part of factual basis of his claim that he continued to remain a partner. The eviction proceedings concerning the same premises are connected with his asserted status and claimed entitlement.

61. The Respondents have relied upon *Addanki Narayanappa* in support of principle that a partner has no separate proprietary interest in any particular item of partnership property. The Supreme Court observed:

> "His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm".

62. This principle is important. A partner cannot merely because a particular partnership property is situated in Mumbai claim that such property belongs exclusively to him. At the same time, *Addanki Narayanappa* does not mean that location and possession of partnership assets become irrelevant while examining territorial jurisdiction in every factual situation. The question before this Court is not whether Flat A-502 or Flat A-104 exclusively belongs to the Applicant. The question is whether the Applicant's asserted partnership rights, including his alleged right to remain in possession and alleged attempt to terminate those rights, have substantial factual connection with Mumbai. On this issue, *Addanki Narayanappa* does not require Mumbai to be excluded from consideration.

63. The Respondents are correct in submitting that a branch office, by itself, does not confer jurisdiction. Similarly, residence of one partner in Mumbai cannot by itself create jurisdiction. The test remains whether material facts necessary for the controversy have arisen within territorial jurisdiction of this Court. Existence of branch office is only one circumstance and cannot be treated as conclusive. In the present case facts go beyond existence of a branch office. The Applicant relies upon his claimed business activities in Mumbai, identified partnership premises in Mumbai, his asserted possession of those premises as part of partnership entitlement, and subsequent eviction proceedings concerning same subject matter. The invocation notice states that those premises continue in his possession as part of his asserted partnership entitlements, subject to final settlement of accounts. Therefore, Mumbai is not being relied upon only because the Applicant resides here.

64. The Respondents' reliance upon the registered office and books of account at New Delhi remains a serious factor. If the dispute was confined only to a bare claim for dissolution and rendition of accounts, without any dispute concerning the Applicant's alleged status, possession, or rights in Mumbai premises, the argument in favour of New Delhi would have been stronger. In such circumstances, principles concerning substantial cause of action would have greater force in favour of the Respondents. The actual controversy, however, is wider. The Applicant alleges wrongful retirement, fabrication of documents, alteration of constitution of the firm, denial of his status as partner, non-payment of his share, withholding of accounts and an attempt to remove him from Mumbai premises. At the Section 11 stage, these disputes cannot be divided and treated as though the controversy is only an exercise for settlement of accounts.

65. Another relevant circumstance is that the Applicant had earlier approached this Court under Section 9 of the said Act. From the material relied upon by the parties, while deciding the Section 9 petition, found that the Applicant had shown material facts constituting substantial part of cause of action within territorial jurisdiction of this Court. The Respondents dispute wider effect of that order and submit that its findings were connected with possession and eviction reliefs.

66. The Section 9 order cannot be treated as final adjudication of territorial jurisdiction for purpose under Section 11. Nevertheless, when same controversy is again before this Court, the earlier order cannot be treated as irrelevant.

67. Section 42 does not compel this Court to entertain the present Section 11 application merely because Section 9 proceedings were earlier filed here. On that limited aspect, the Respondents are correct. *Afcons Infrastructure* makes legal distinction clear. But it does not follow that earlier Section 9 proceedings have no relevance at all. They show that Mumbai was selected as the dispute earlier disclosed substantial factual connection with Mumbai.

68. Mr. Khandeparkar has relied upon *BBR* and *BGS SGS Soma* to contend that where no seat has been agreed, jurisdiction has to be examined with reference to statutory scheme and material facts constituting cause of action. I accept that submission to that extent. I am, however, unable to accept the further submission that Mumbai has become agreed juridical seat. There is no bilateral agreement between parties designating Mumbai as seat. The statement in the invocation notice that proceedings should be conducted at Mumbai is only a proposal made by the Applicant. Absence of agreed seat does not mean that only New Delhi can possibly have jurisdiction. Section 2(1)(e) identifies competent Court by reference to questions forming subject matter of arbitration. The territorial inquiry must, therefore, take into account factual basis of the dispute. Authorities relied upon by the Respondents recognize that relevant test is existence of material facts having real nexus with controversy.

69. The present matter is different from a case where a party attempts to create jurisdiction merely by relying upon a letter dispatched from Mumbai or by pointing only to his residence in

Mumbai. Here, the Applicant's substantive claim of continuing partnership rights is connected, according to his case, with business operations in Mumbai and partnership premises situated in Mumbai. His assertion that he was excluded from partnership and thereafter sought to be evicted from those premises forms part of same dispute which he seeks to refer to arbitration.

70. I have considered the submission that jurisdiction cannot be created by consent or acquiescence. That principle is correct. Filing of eviction proceedings in Mumbai cannot confer jurisdiction upon this Court if no jurisdiction otherwise exists. Similarly, Applicant's request that arbitration be conducted at Mumbai cannot by itself create juridical seat. However, jurisdiction is not being upheld on either of those grounds alone. It is being examined on cumulative effect of material facts pleaded and substantial connection which the dispute has with Mumbai. The Applicant's invocation notice itself is material. It does not merely seek dissolution and accounts. It seeks declaration that the Applicant continues to be a lawful partner, challenges alleged retirement documents and claims his 5% share and accounts. It proposes that arbitration proceedings be conducted at Mumbai. The Court has to consider substance of dispute while examining jurisdiction. Controversy cannot be reduced only because some consequences may involve accounting.

71. At this stage, limited nature of inquiry under Section 11 must be kept in view. This Court is not required to finally determine whether the Applicant was validly retired on 14 December 2024, whether alleged Indemnity Bond and Affidavit are forged, whether Form V is valid, or whether the Applicant is ultimately entitled to

5% of firm's assets. Those questions remain disputed. They may require examination on evidence by the Arbitral Tribunal. The later deed placed on record states that the firm was reconstituted with effect from 14 December 2024 and contains provisions concerning registered office and books of account at New Delhi. However, the Applicant disputes validity of alleged retirement and subsequent documents. Those disputed questions cannot be conclusively decided at this stage.

72. There is, therefore, sufficient prima facie material showing existence of arbitration agreement and existence of disputes falling within language of Clause 16. The Clause covers "any dispute or difference" arising between partners. The disputes raised in invocation notice concerning alleged retirement, partnership status, accounts, dissolution, and consequences of alleged reconstitution, prima facie, fall within that language.

73. On the issue of Section 42, I hold that Section 42 does not bar the present Section 11 application before this Court. *Associated Contractors* remains relevant in identifying scope of Section 42 in relation to applications made to a "Court". *Afcons Infrastructure* considers position after the 2015 amendment and holds that the High Court exercising jurisdiction under Section 11 cannot be equated with the "Court" contemplated by Section 2(1)(e). I hold that there is no concluded agreement between the parties fixing Mumbai as juridical seat of arbitration. Clause 16 does not designate any seat. The unilateral proposal in invocation notice that arbitration proceedings should be conducted at Mumbai cannot amount to contractual designation of juridical seat. If the matter proceeds to arbitration, question concerning juridical seat may be dealt with, subject to agreement of parties and statutory provisions applicable thereto.

74. I nevertheless find that this Court has territorial jurisdiction to entertain the present Section 11 application because the material controversy has substantial and direct factual connection with Mumbai. This conclusion is based upon combined effect of Applicant's asserted partnership operations in Mumbai, partnership premises in Mumbai, his claimed continuing possession as part of partnership entitlement, and disputes and eviction proceedings connected with that claim. These are material facts having real nexus with arbitration dispute.

75. Consequently, the present application under Section 11 is maintainable before this Court. The learned Sole Arbitrator shall decide all disputed questions falling within scope of arbitration agreement, subject to limits of jurisdiction under the said Act. Findings recorded herein are confined to existence of arbitration agreement, jurisdiction of this Court and maintainability of the present Section 11 proceedings. They shall not be understood as final adjudication on the Applicant's substantive claim that he continued to be a partner, validity or otherwise of documents dated 13 December 2024 and 18 February 2025, his entitlement to a 5% share, or final settlement of accounts. Those questions, if raised before the Arbitral Tribunal, shall be decided on basis of material and evidence placed before it.

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

(i) In exercise of powers under Section 11 of the Arbitration and Conciliation Act, 1996, Hon'ble Shri Justice Nitin Jamdar, former Chief Justice of the Kerala High Court, is appointed as the sole Arbitrator to adjudicate the disputes and differences between the Applicant and the Respondents arising out of and in connection with the Partnership Deed and the arbitration agreement contained in Clause 16 thereof;

(ii) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

(iii) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

(iv) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

(v) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

(vi) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs;

(vii) It is clarified that all questions on merits, including the Applicant's claim that he continues to be a partner, the validity, and effect of Form V dated 13 December 2024, the alleged Indemnity Bond and Affidavit dated 18 February 2025, the alleged retirement and reconstitution of the partnership, the Applicant's claimed 5% share, rendition of accounts, dissolution and all other disputes arising between the parties, are kept open for consideration and decision by the learned Sole Arbitrator;

(viii) The learned Sole Arbitrator shall decide the reference independently and on its own merits, without being influenced by any prima facie observations made in the present order;

(ix) The parties shall appear before the learned Sole Arbitrator on such date and at such time and place as may be communicated or fixed by the learned Sole Arbitrator;

(x) The Arbitration Application is accordingly disposed of.

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

(AMIT BORKAR, J.)