BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.06.2026	Pronounced on : 18 .09.2026

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

and

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Appeal (CAD) (MD).No.3 of 2025

and

C.M.P.(MD).No.11789 of 2025

P.Muthulakshmi ... Appellant / Plaintiff

Vs.

P.Raju ... Respondent / Defendant

PRAYER: Appeal – Commercial Appeal has been filed under Section 13 of the Commercial Courts Act, to set aside the judgment and decree dated 09.12.2024 made in C.O.S.No.1 of 2024 (Commercial Original Suit) on the file of the learned Principal District Judge, Theni and to allow the above appeal.

For Appellant :Mr.V.Raghavachari,
Senior Counsel
for Mr.R.Suriya Narayanan

For Respondent : Mr.S.Meenakshi Sundaram,
Senior Counsel
for Mr.P.Ganapathi Subramanian

JUDGMENT

(Judgment of the Court was made by **K.K.RAMAKRISHNAN,J.**)

The plaintiff in Commercial Original Suit No.1 of 2024, on the file of the learned Principal District Judge, Theni, has preferred the present Commercial Appeal challenging the judgment and decree dismissing her suit for declaration of dissolution of the partnership firm, rendition of accounts, passing of a preliminary decree for partition of her share in the partnership assets, and permanent injunction restraining the defendant from alienating the suit properties.

2. For the sake of convenience and clarity, the parties are referred to as they were arrayed before the trial Court, namely, as plaintiff and as defendant.

3. Brief facts of the case:

3.1. The plaintiff and the defendant entered into a partnership under a written Partnership Deed dated 01.04.2012 in the name and style of "PRV Properties" for the purpose of carrying on the business of real estate development. The partnership was registered on 06.05.2013. Under the terms of the partnership deed, the plaintiff and the defendant being the partners agreed to purchase landed properties, develop them into residential layouts, apartments, flats, independent houses and villas, and subjecting them for market and sell the developed properties to the public.

3.2. According to the plaintiff, she contributed a sum of Rs.10,00,000/- towards the capital of the partnership. The partnership deed further provided that she would receive a monthly remuneration of Rs.15,000/- and interest at the rate of 12% per annum on the capital contribution made by her and any additional capital contributed by her. The partnership deed expressly construed it as a partnership at will. It is the further case of the plaintiff that, out of the contribution made by both partners, lands measuring 30 acres and 31 cents were purchased in the name of partnership firm under four registered sale deeds in the name of "PRV Properties". After the said purchase of 30 acres and 31 cents, approval from the DTCP was also obtained for development of the layout.

3.3. The plaintiff alleged that, without maintaining proper accounts and without her knowledge or consent, the defendant sold 28 plots to various purchasers representing himself as a partner of "PRV Properties". Consequently, the plaintiff issued a legal notice calling upon the defendant to explain. Since no reply was received, she instituted O.S.No.1 of 2016 seeking a permanent injunction restraining the defendant from alienating the suit properties. In the said suit, the defendant filed I.A.No.78 of 2016 contending that the partnership deed contained an arbitration clause requiring the disputes to be resolved through arbitration. The said application was dismissed by the learned District Munsif, Periyakulam. Aggrieved thereby, the defendant preferred C.R.P.(MD).No.49 of 2017 before this Court. This Court allowed the revision petition, set aside the order of dismissal, and remitted the matter to the trial Court for fresh consideration. Thereafter, the trial Court accepted the objection made by the defendant regarding the arbitration clause and closed the suit, leaving it open to the parties to initiate arbitration proceedings.

3.4. According to the plaintiff, the relationship between the partners had completely broken down and there was no possibility of continuing the partnership business. She therefore issued a notice to the defendant dated 03.03.2017 expressing her intention to dissolve the partnership and thereafter instituted the present suit seeking dissolution of the partnership firm, rendition of accounts, partition of the partnership assets and consequential permanent injunction.

3.5.The defendant filed a written statement and an additional written statement resisting the suit. The substance of the defence is as follows: The defendant denied all the material averments made in the plaint. It was contended that, when the present suit was instituted, C.R.P.(MD).No.49 of 2017 arising out of O.S.No.1 of 2016 was then pending before this Court regarding the maintainability of the earlier injunction suit. Therefore, the plaintiff, having failed to disclose the pendency of the earlier proceedings, had not approached the Court with clean hands, and hence the present suit is not maintainable.

3.6.The defendant further contended that the partnership deed contained a valid arbitration clause and, therefore, the civil suit itself was not maintainable in view of the agreement between the parties to resolve disputes through arbitration. By way of an additional written statement, the defendant specifically pleaded that the plaintiff had never contributed the alleged sum of Rs.10,00,000/- towards the partnership.

3.7.According to the defendant, the entire consideration for purchase of the properties was paid exclusively by him by borrowing approximately Rs.48,05,000/- from his son, brother and other family members. Consequently, the properties, though purchased in the name of the firm, were asserted to be his self-acquired properties and not partnership assets. The defendant therefore disputed the plaintiff's claim for rendition of accounts or partition.

3.8.The defendant also pleaded that, after the closure of O.S.No.1 of 2016 pursuant to the orders passed in C.R.P.(MD).No.49 of 2017, the plaintiff filed arbitration proceedings being Arbitration O.P.No.32 of 2019 before the Principal Bench of this Court under Section 11 of the Arbitration and Conciliation Act, 2015 to appoint Arbitrator to adjudicate the dispute relating to the dissolution of the partnership and recovery of the amount. Subsequently, the plaintiff had also filed the claim petition for the said relief.

3.9. The learned Arbitrator, after considering the pleadings, oral and documentary evidence and the rival contentions of the parties, observed that the disputes involved several complicated questions of fact and law, which, according to the Arbitrator, required adjudication by a competent Civil Court, and terminated the arbitration proceedings under Section 32(2)(c), holding that the reference to the arbitration is barred by limitation.

3.10.Aggrieved by the arbitral award, proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, were initiated. However, the said application was subsequently dismissed as withdrawn without any adjudication on merits. On the strength of the arbitral award, the defendant contended before the trial Court that the present suit was barred under Order II Rule 2 of the Code of Civil Procedure as well as by the principles of *res judicata*. Accordingly, the defendant sought dismissal of the suit.

3.11. On the basis of the rival pleadings, the learned trial Judge framed the necessary issues for determination. In support of her case, the plaintiff examined P.Ws.1 to 7 and marked Exhibits A-1 to A-28. On the side of the defendant, D.W.1

was examined and Exhibits B-1 to B-33 were marked.

4. Upon appreciation of the oral and documentary evidence, the learned trial Judge dismissed the suit holding that the claim was barred by the principles of *res judicata*. The trial Court further held that the plaintiff had failed to establish that she had contributed the alleged capital towards the partnership business or that she had invested any amount in the partnership firm. The learned trial Judge also held that, since the issue relating to dissolution of the partnership had already been decided by the learned Arbitrator and the arbitral award had attained finality, the present suit was not maintainable. Aggrieved by the judgment and decree of the trial Court, the plaintiff has preferred the present Commercial Appeal suit challenging the findings of the trial Court on the various grounds set out in the memorandum of appeal.

5. **Submission of the learned Senior Counsel appearing for the appellant:**

5.1. The learned Senior Counsel appearing for the appellant/plaintiff contended that the learned trial Judge committed a manifest error in dismissing the suit by invoking the provisions of Order II Rule 2 and Section 11 of the Code of Civil Procedure, embodying the principles of *res judicata*. According to the learned Senior Counsel, the earlier suit and the present suit arose out of distinct and independent causes of action. The earlier suit was one for permanent injunction restraining alienation of the partnership properties, whereas the present suit has been instituted for dissolution of the partnership, rendition of accounts and consequential partition of the partnership assets. Therefore, the constituents necessary for attracting either Order II Rule 2 CPC or the doctrine of *res judicata* are wholly absent.

5.2.The learned Senior Counsel further submitted that the learned Arbitrator, after examining the rival pleadings and materials, had categorically recorded a finding that the disputes involved complicated questions of fact and law requiring adjudication by a competent Civil Court. Having reached such a conclusion, the learned Arbitrator should not have proceeded to terminate the arbitration proceedings on the ground of limitation. According to the learned Senior Counsel, once the Arbitrator held that the dispute required adjudication by the Civil Court, he lacked the jurisdiction to finally determine the issue of limitation and reject the claim. Consequently, the finding rendered by the Arbitrator on limitation is without jurisdiction and cannot constitute a reason for applying the principles of *res judicata* or Order II Rule 2 CPC.

5.3. It was further contended that the present commercial suit had already been instituted prior to the commencement of the arbitral proceedings. The arbitral proceedings arose only because of the objection raised by the defendant in the earlier injunction suit on the basis of the arbitration clause contained in the partnership deed. The subject matter of the earlier suit was confined to the relief of injunction, whereas the present suit seeking dissolution of the partnership was already pending before the competent Civil Court even before the arbitral proceedings commenced and in the said suit, question of limitation did not arise and the said suit was filed on 24.04.2017 after issuance of dissolution of partnership notice dated 03.03.2017. Therefore, the findings recorded in the arbitral proceedings cannot bind or operate as *res judicata* against the present suit.

5.4.The learned Senior Counsel also submitted that the learned trial Judge failed to appreciate that the arbitral proceedings itself contain a categorical finding recognizing the existence of the partnership between the parties. Apart from the said finding, voluminous documentary evidence were produced by both parties, including the registered partnership deed and the documents relating to the acquisition of the properties in the name of the partnership firm, which clearly establish the existence of the partnership and the fact that the suit properties constitute partnership assets.

5.5. Despite the overwhelming documentary evidence, the learned trial Judge erroneously concluded that the plaintiff had failed to establish her contribution towards the partnership business and the purchase of the properties. The finding that the defendant alone contributed the consideration for purchase of the properties and that the plaintiff has no right to seek dissolution of the partnership or partition of the partnership assets is, according to the learned Senior Counsel, wholly contrary to the documentary evidence available on record and is therefore liable to be set aside.

5.6.The learned Senior Counsel also addressed the objection regarding payment of court fee. According to him, the trial Court erred in holding that the court fee paid under Section 37 of the Tamil Nadu Court Fees and Suits Valuation Act was not proper on the premise that the plaintiff was not in possession of the partnership properties. It was submitted that the reliefs claimed are essentially for dissolution of the partnership, rendition of accounts and consequential division of the partnership assets, and the court fee paid is in accordance with law.

5.7. With the above submissions, the learned Senior Counsel prayed that the judgment and decree passed by the Commercial Court be set aside, the appeal be allowed, and the suit be decreed as prayed for.

6. **Submission of the learned Counsel appearing for the respondent:**

6.1.Per contra, the learned Senior Counsel appearing for the respondent/defendant supported the judgment and decree passed by the Commercial Court and submitted that the learned trial Judge had rightly dismissed the suit on both factual and legal grounds.

6.2. The learned Senior Counsel submitted that the earliest suit instituted by the plaintiff was one for permanent injunction. In the said proceedings, the defendant protested the suit stating about the arbitration clause contained in the partnership deed, and the parties were directed to resolve their disputes through arbitration. Pursuant thereto, the plaintiff herself invoked the arbitration clause and sought the reliefs of dissolution of the partnership and rendition of accounts before the learned Arbitrator.

6.3. According to the learned Senior Counsel, the learned Arbitrator, after considering the rival claims, rendered a categorical finding that the claim for dissolution of the partnership was barred by limitation. Though the plaintiff challenged the arbitral award by initiating proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, the said proceedings were subsequently withdrawn. Consequently, the arbitral award attained finality and became binding upon the parties.

6.4. It was therefore contended that the findings recorded in the arbitral award operate as *res judicata*, and the learned trial Judge rightly relied upon the same while dismissing the present suit. The plaintiff, having allowed the arbitral award to attain finality, cannot indirectly challenge its correctness in the present civil proceedings. Such a course is legally impermissible.

6.5. The learned Senior Counsel further submitted that this Court, while exercising appellate jurisdiction in the present commercial appeal, cannot examine the correctness or legality of the findings recorded by the learned Arbitrator. Once the proceedings under Section 34 of the Arbitration and Conciliation Act were withdrawn, the arbitral award became final and enforceable. Therefore, the plaintiff cannot be permitted to question the finding of arbitral award. Any such exercise would amount to sitting in appeal over the arbitral award, which is beyond the jurisdiction of this Court in the present proceedings.

6.6.The learned Senior Counsel further submitted that, independent of the arbitral award, the learned trial Judge, on impartial appreciation of the oral and documentary evidence, recorded a categorical finding that the plaintiff had failed to establish that she had contributed Rs.10,00,000/- towards the partnership or invested any amount for the purchase of the suit properties. The said finding is purely a fact based on the evidence on record and does not warrant interference by this Court in appeal.

6.7. It was further argued that the plaintiff was admittedly not in possession of the suit properties. In such circumstances, without seeking an appropriate declaration that the suit properties constitute partnership assets and without seeking the consequential relief of recovery of possession, the suit for dissolution of partnership, rendition of accounts and partition is not maintainable. Consequently, the learned trial Judge rightly held that the court fee paid under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act was insufficient.

6.8. The learned Senior Counsel also pointed out that the trial Court had directed payment of the requisite stamp duty in respect of certain documents admitted in evidence. The said direction was challenged before this Court by way of a Civil Revision Petition. The learned Single Judge, while allowing the revision petition, upheld the objection raised by the defendant and directed the plaintiff to pay the proper stamp duty in accordance with the provisions of the Indian Stamp Act before the documents could be acted upon. In the light of the above circumstances, the learned Senior Counsel submitted that the learned trial Judge had correctly appreciated both the factual and legal aspects of the matter and arrived at well-reasoned findings warranting no interference by this Court. He therefore prayed that the Commercial Appeal be dismissed and the judgment and decree of the Commercial Court be confirmed. The learned Senior counsel also relied on a number of precedents.

6.9.The learned Senior counsel appearing for the plaintiff by way of reply would submit that non prosecution of Section 34 proceedings has no consequences when the termination of Arbitration Proceedings was passed under Section 32(2)(c) of the Arbitration and Conciliation Act 2015 and the same can be agitated in the present suit. The learned Senior counsel relied upon number of precedents.

7. This Court carefully considered the rival submissions advanced by the learned Senior Counsel appearing for the appellant and the learned Senior Counsel appearing for the respondent. This Court has also perused the entire records and the precedents relied upon by both sides.

8. Upon consideration of the pleadings, evidence and the submissions made by the parties, the following points arise for determination in this appeal:

(i) Whether the learned trial Judge was justified in dismissing the suit by applying the provisions of Order II Rule 2 and Section 11 of the Code of Civil Procedure, embodying the principles of *res judicata without framing issue*, on the basis of the arbitral termination proceeding dated 20.3.20 particularly when the learned Arbitrator had himself observed that the dispute involved complicated questions of fact and law requiring adjudication by a competent Civil Court, but nevertheless terminating the arbitration proceedings under Section 32(2)(c) of the Arbitration Act, on the reasoning of impossibility and holding that the reference for Arbitration of the partnership was barred by limitation under article 137 of Limitation Act?

(ii) Whether the learned trial Judge was justified in holding that the plaintiff had failed to establish her contribution towards the partnership and the purchase of the suit properties, despite the admitted documentary evidence showing that the properties stood in the name of the partnership firm?

(iii) Whether the learned trial Judge was justified in holding that the suit was not maintainable for want of proper court fee under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act on the ground that the plaintiff had not sought the relief of declaration of title and recovery of possession?

9.**Discussion on the establishment of partnership and plaintiff entitlement as partners of firm:**

9.1. The records disclose that the plaintiff and the defendant entered into a written Partnership Deed dated 01.04.2012, which has been marked as Exhibit A-1. The said partnership deed was subsequently registered on 06.05.2013 and marked as Exhibit A-2. The documentary evidence produced by both parties indisputedly establishes that a valid partnership firm came into existence between the plaintiff and the defendant under the name and style of “PRV Properties”.The partnership deed itself records that the plaintiff contributed a sum of Rs.10,00,000/- towards the capital of the firm. The object of the partnership was to acquire lands, develop them into residential layouts and undertake real estate development. The documentary evidence further establishes that, in pursuance of the objects of the partnership, several immovable properties were purchased in the name of the partnership firm. It is the specific case of the defendant that the plaintiff did not contribute any amount towards the purchase of the properties in the name of the partnership firm and that the defendant alone invested the money for purchasing the properties in the name of the firm. In Exhibits A-6, A-7, A-8, A-9, A-13, A-14 and A-16, which relate to the suit properties, it is clearly stated that the defendant is one of the partners of the firm. Apart from the above documents, Exhibit A-10 also specifically refers the plaintiff as a partner of the firm. Likewise, Exhibit A-11 contains the joint signatures for the operation of the bank account of the firm. The entries in the said account also disclose the investment and transfer of amounts in the names of the partners. Further, Exhibits A-27 and A-28, namely, the income-tax records for the assessment year 2014-15, also disclose the plaintiff as one of the partners of the firm. The sale deeds standing in the name of the partnership firm and the subsequent conveyances executed by the defendant describing himself as a partner of PRV Properties unmistakably demonstrate that the acquisitions were consistently treated as assets of the partnership firm. Throughout the transactions, the defendant acted only in his representative capacity as a partner of the firm. Apart from that, this Court, on a careful consideration of the evidence on record, finds that the plaintiff has examined several witnesses to establish that she had also contributed towards the purchase consideration of the properties acquired in the name of the partnership firm. The relevant portion of the Deposition of Witness DW.1 is as follows:

> *நானும், வாதியும் சேர்ந்து கூட்டாக வணிகம் செய்ய ஒரு பங்குதாரர் ஒப்பந்தத்தை (வா.சா.ஆ-1) முறையாக கடந்த 01.04.2012 அன்று ஏற்படுத்திக் கொண்டோம் என்றால் சரிதான். இங்கு காட்டப்படும் வா.சா.ஆ-1 ஒப்பந்தத்தில் அனைத்து பக்கங்களிலும் 1-வது பார்ட்டியாக நான் கையொப்பம் செய்துள்ளேன் என்றால் சரிதான். வா.சா.ஆ-1 ல் உள்ள சரத்துக்கள் அனைத்தையும் நான் படித்துப் பார்த்து தான் கையொப்பம் செய்தேன் என்றால் சரிதான். வா.சா.ஆ-1 ன் படி நானும் வாதியும் சேர்ந்து* P.R.V.Properties *என்ற கூட்டான நிறுவனத்தை ஏற்படுத்தி அதில் கூட்டாக நிலங்களை கிரையமாகவும் பிளாட் போடவும் அதில் தனி வீடுகள் மற்றும் மாடி வீடுகள் கட்டியும் பொதுமக்களுக்கு விற்கவும் மேற்படி நிறுவனத்தின் செயல்பாடுகளை இந்தியா முழுவதும் விரிவுபடுத்தவும் ஒப்புக்கொண்டு மேற்படி கூட்டாண்மை நிறுவனத்தை ஏற்படுத்தி கொண்டோம் என்றால் சரிதான். இந்த வா.சா.ஆ-1 ல் 1 வது பார்ட்டியாக நானும், 2 வது பார்ட்டியாக வாதியும் கையொப்பம் செய்துகொண்டோம் என்றால்*

சரிதான். வா.சா.ஆ-1 ஆவணத்தின் படி நான் P.R.V.Properties நிறுவாக பங்குதாரராக (Managing Partner) இருந்து நிலங்களை கிரையம் பெற, விலை நிர்ணயம் செய்ய, விற்க மற்றும் கூட்டாண்மை நிறுவனத்தின் அனைத்து செயல்பாடுகளயையும் நானே நின்று கவனித்துக் கொள்ள வேண்டும் என எழுதப்பட்டுள்ளது என்றால் சரிதான். கூட்டாண்மை நிறுவனத்திற்கான மேற்சொன்ன அனைத்து செயல்பாடுகளையும் மற்றொரு பங்குதாரரான இந்த வாதியிடம் ஒப்புதல் பெற்றும் விவரங்களை அவருக்கு தெரிவித்தும் நான் செயல்பட வேண்டும் என்று எழுதப்பட்டுள்ளது என்றால் சரிதான். பங்குதாரர் நிறுவனத்தின் ஒவ்வொரு நான் வரவு செலவு கணக்குகளை மற்ற பங்குதாரரான வாதிக்கு நான் தெரிவிக்க கடமைபட்டுள்ளேன் என்று குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான். வா.சா.ஆ-1 ன் படி P.R.V.Properties என்ற பங்குதாரர் நிறுவனத்தின் காலவரையறை குறிப்பிடாமல் கூட்டுவணிகம் நடத்த வேண்டி ஏற்படுத்தப்பட்ட ஒரு நிறுவனம் (Partnership at will) என்றால் சரியல்ல. இருவரும் இசைவில்லாமல் போனால் ஒருவர் தெரிவித்து பிரிந்து செல்லலாம் என்று உள்ளது. கூட்டாண்மை நிறுவனத்தை பொறுத்தவரை 2 அல்லது அதற்கு மேற்பட்ட நபர்கள் மட்டுமே நடத்த முடியும் என்றும் தனி நபரால் நடத்த முடியாது என்றும் சொன்னால் சரிதான். இங்கே காட்டப்படும் வா.சா.ஆ-2 கூட்டாண்மை நிறுவனத்தை 06,05,2013 அன்று பதிவு செய்யப்பட்டுள்ளது என்றால் சரிதான். P.R.V.Properties -ற்காக மொத்தம் 30.31 ஏக்கர் கடந்த 16.08.2013 அன்று வா.சா.ஆ-6, 7, 8 மற்றும் 9-ன் வாயிலாக கிரையம் பெறப்பட்டது என்றால் சரியல்ல. நான் கிரையம் பெற்றேன். வா.சா.ஆ-6, 7, 8, 9 ஆவணத்தில் வாங்குபவர் கிரையம் பெறுபவர் என்ற நிலையில் P.R.V.Properties-ன் ஒரு பங்குதாரரும், பெருமாள்சாமி அவர்களின் குமாரருமான ராஜீ என்று குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான். ஆக வா.சா.ஆ-6, 7, 8, 9 ஆவணங்களின் படி அதில் கண்ட சொத்துக்கள் 30.31 ஏக்கர் P.R.V.Properties -க்கு பாத்தியப்பட்டது என்று சொன்னால் சரியல்ல. மேற்படி சொத்துக்கள் அனைத்தும் தனிப்பட்ட முறையில்

வாங்கப்படவில்லை என்றும் P.R.V.Properties பங்குதாரர் என்ற முறையில் வாங்கப்பட்டது என்று சொன்னால் சரியல்ல. எனக்காக மட்டும் தான் அந்த சொத்துக்களை வாங்கினேன். வா.சா.ஆ-6, 7, 8, 9 வாயிலாக கனகராஜ், செல்வி, T,பாண்டியராஜன், அவருடைய மகன் நவநீத கிருஷ்ணன் மற்றும் ஜெயலட்சுமி ஆகியோர்களிடம் இருந்து கிரையம் பெற்றது என்றால் சரிதான். மேற்படி 30.31 ஏக்கர் நிலத்தின் வடக்கு மாலில் இந்த வாதிக்கு பாத்தியப்பட்ட 4.33 ஏக்கர் நிலம் சொந்தமாக உள்ளது என்று சொன்னால் சரிதான். 4.33 ஏக்கர் தேனி வடி திண்டுக்கல் தேசிய நெடுஞ்சாலையில் அமைந்துள்ளது என்று சொன்னால் சரிதான். மேற்படி 30.31 ஏக்கரில் தெற்கு மாலில் சுமார் 10 ஏக்கர் நிலம் வாதி மற்றும் அவருடைய சகோதரருக்கு பாத்தியப்பட்டது என்று சொன்னால் சரிதான். வாதிக்கு ஆண்டிபட்டி தாலுகா சண்முகசுந்தராபுரம் மற்றும் வருசநாடு ஆகிய இரண்டு கிராமங்கில் 10 ஏக்கர் விவசாய நிலம் உள்ளது என்றால் எனக்கு தெரியாது. திண்டுக்கல் அய்யலூர் கிராமத்தில் வாதிக்கு 7 ஏக்கர் நிலம் சொந்தமாக உள்ளது என்று சொன்னால் அது பற்று தெரியாது. வீரபாண்டி கிராமம் அரசு நகரில் வாதிக்கு சொந்தமாக வீடு உள்ளது என்று சொன்னால் எனக்கு தெரியாது. வாதியின் மகன் தமிழ்நாடு காவல்துறையில் சார்பு ஆய்வாளராக பணியாற்றினார் என்றால் காவல்துறையில் பணியாற்றினார் என்று தெரியும்.

வா.சா.ஆ-6, 7, 8, மற்றும் 9 ஆவணங்களில் வாங்குபவர் என்ற நிலையில் P.R.V.Properties –ன் அதன் ஒரு பங்குதாரர் P.P.பெருமாள்சாமி என்பவரின் மகன் ராஜீ என்று எழுதப்பட்டுள்ளது என்றால் P.R.V.Properties பங்குதாரர் என்பது ஒரு டிஸ்கிரப்சனுக்காக போட்டு கையொப்பம் இட்டுள்ளேன். அது என்னிடம் காண்பிக்கப்படும் D.T.C.P.-அப்ரூவல் மேற்படி 5 நபர்களின் பெயரில் வாங்கப்பட்டது என்றால் சரிதான். அந்த D.T.C.P.-அப்ரூவல் ஆவணம் வா.சா.ஆ.17 ஆக குறியீடு செய்யப்படுகிறது. அதற்கான செலவுகளை வாதி செலவு

செய்தார் என்றால் சரியல்ல. என் சொந்த பணத்தில் இருந்து தான் செய்தேன். மேற்படி D.T.C.P./அப்ரூவல் -கான செலவுகள் வாதியால் தான் செய்யப்பட்டது என்றும் அதன் பேரில் நான் வாதியை அணுகி மேற்படி சொத்தை வாதியுடன் சேர்ந்து கூட்டாக கிரையம் பெற்று ரியல் எஸ்டேட் தொழில் செய்ய முன்மொழிந்தேன் என்றால் சரியல்ல. அதன் பேரில் தான் P.R.V.Properties என்ற நிறுவனமானது நானும், வாதியும் சேர்ந்து 01,04,2012 அன்று வா.சா.ஆ.-1 வாயிலாக ஆரம்பிக்கப்பட்டு, தலா ரூ.5 இலட்சம் ரொக்கமாக முதலீடு செய்யப்பட்டு, பின்பு வா.சா.ஆ.-2 வாயிலாக பதிவு செய்யப்பட்டது என்று சொன்னால் சரியல்ல. வாதி ஒரு பைசா கூட முதலீடு செய்யவில்லை. வாதி படிக்காத கையெழுத்து மட்டும் போடக்கூடிய நபர் என்றால் சரிதான். அதனால் தான் நான் வாதியை பல்வேறு வழிகளில் மோசடி செய்து ஏமாற்றியுள்ளேன் என்றால் சரியல்ல. வா.சா.ஆ.1 ஆவணத்தின் படி நான் செய்யும் செயல்பாடுகள் அனைத்தும் வாதியிடம் ஆலோசித்து செய்யவேண்டும் என்று உள்ளது என்றால் சரிதான். அதேபோல் நிறுவனத்தின் இலாப நஷ்ட கணக்குகளை ஈவு படி இரண்டு பங்குதாரர்களும் பகிர்ந்து கொள்ளவேண்டியது என்று வா.சா.ஆ.-1 ல் கூறப்பட்டுள்ளது என்றால் சரிதான். 16.09.02013-ல் இருந்து 27 நபர்களுக்கு பல்வேறு தேதிகளில் 27 ஆவணங்களின் வாயிலாக 27 பிளாட்டுகள் விற்பனை செய்துள்ளேன் என்றால் சரிதான். மேற்படி அனைத்து ஆவணங்களிலும் கிரையம் கொடுப்பவர் என்ற நிலையில் P.R.V.Properties -ன் ஓர் பங்குதாரரும், P.P.பெருமாள்சாமி அவர்களின் குமாரருமான P.ராஜீ என்று தான் கையொப்பம் செய்து 27 பிளாட்டுகளையும் விற்பனை செய்துள்ளேன் என்றால் சரிதான். டிஸ்கிரிப்சனுக்காக அவ்வாறு போட்டுள்ளேன். இங்கு காட்டப்படும் மேற்படி 27 பிளாட்டுகள் விற்பனை செய்யப்பட்டதற்கான 14 ஆவணங்கள் ஒரு தொகுப்பாகவும், 13 ஆவணங்கள் ஒரு தொகுப்பாகவும் உள்ளவை என்னால் பதிவு செய்யப்பட்டது தான். மேற்படி 14 ஆவணங்கள் அடங்கிய தொகுப்பு வா.சா.ஆ.-18 ஆகவும், 13 ஆவணங்கள் அடங்கிய தொகுப்பு வா.சா.ஆ.-19 ஆகவும் (பிரதிவாதி தரப்பு வழக்கறிஞர் ஆட்சேபனையுடன்) குறியீடு செய்யப்படுகிறது. மேற்படி 27 பிளாட்டுகளை

விற்பனை செய்தது சம்பந்தமாக வாதியிடம் எந்த கணக்கு வழக்கும் கொடுக்காம் அவரை நான் மோசடி செய்துவிட்டேன் என்றால் சரியல்ல. அதனால் தான் என் மீது நம்பிக்கை இழந்து P.R.V.Properties-யை களைக்க கோரி 03.03.2017 -ல் வா.சா.ஆ-3 வாயிலாக அறிவிப்பு அனுப்பினார்கள் என்றால் சரியல்ல, நம்பிக்கை இழந்து என்று சொல்வது தவறு. ஆனால் வா.சா.ஆ-3 வாயிலாக அறிவிப்பு அனுப்பியதை பெற்றுக்கொண்டு நான் பதில் அறிவிப்பு அனுப்பி உள்ளேன். வா.சா.ஆ-5 பதில் அறிவிப்பில் தாங்கள் கூட்டு நிறுவனத்தில் பணம் எதுவும் முதலீடு செய்யாமல் தாங்கள் மகன் மூலம் வழங்க வேண்டிய கமிஷன் மற்றும் சம்பளம் ஆகியவற்றை முதலீடாக ரூ.5 இலட்சம் மட்டும் காண்பித்து அதனையும் நீங்கள் முழுமையாக பெற்றுக்கொண்டுவிட்டீர்கள் என்று கூறியுள்ளேன் என்றால் சரிதான். மேற்படி பதில் அறிவிப்பில் கூறப்பட்டுள்ள சங்கதிகளை என்னுடைய எதிர்வழக்குரை கூடுதல் எதிர்வழக்குரை மற்றும் நிரூபண வாக்குமூலம் ஆகியவற்றில் சொல்லவில்லை என்று சொன்னால் எனக்கு ஞாபகமில்லை. அதன்பிறகு தான் வாதியால் முதலில் பெரியகுளம் District Munsif Court-ல; O.S.1/2016 என்ற வழக்கு தாக்கல் செய்து அதில் P.R.V.Properties-ல் உள்ள பிராது சொத்துக்களை நீங்கள் எந்தவித பந்தக பராதிரமும் செய்யக்கூடாது என ஒரு உறுத்துக்கட்டளை பரிகாரம் கோரி வாதி தாக்கல் செய்துள்ளார் என்றால் சரிதான். அதில் இடைக்கால உறுத்துக்கட்டளை பரிகாரம் கோரி I.A.1.2016 தாக்கல் செய்து அனுமதிக்கப்பட்டது என்றால் சரிதான். அந்த உத்தரவு ஊர்ஜிதத்தில் இருக்கும் போது அந்த உத்தரவை மதிக்காமல் நான் 50 பிளாட்டுகளை தனிப்பட்ட முறையில் விற்பனை செய்தேன் என்றால் சரியல்ல. நீதிமன்ற உத்தரவு இல்லாத போது தான் நான் பிளாட்டுகளை விற்றுள்ளேன்.

மேற்படி Arbitration / மனு தள்ளுபடி செய்யப்பட்டது என்றால் சரிதான். மேற்படி உத்தரவில்

9.2. Considering all the above facts and circumstances the submissions of the respondent that the claimant is not a partner of the firm cannot be accepted in toto. There are sufficient prima – facie grounds to hold that the partnership is still in existence. At the same time to arrive and to decide whether the claimant invested capital or contributed landed properties into the business of the firm, a Judicial trial is essentially required. The relevant portion of the Deposition of Witness DW.1 is as follows:

> …, என உள்ளது என்றால் சரிதான். இந்த வழக்கு பிராதில் பங்குதாரரான வாதியை வாதியை மற்றொரு பங்குதாரரான நான் மோசடி செய்துவிட்டதால் Partnership- யை களைக்க சொல்லி வழக்கு தாக்கல் செய்துள்ளார் என்றால் சரிதான். பொதுவாக மோசடி என்று ஒரு வழக்கில் இருந்தால் அந்த பிரச்சினையை பொறுத்து மத்தியஸ்திற்கு ஆள்வரை (Arbitration Jurisdiction) இல்லை என்று சொன்னால் அது பற்றி எனக்கு தெரியாது. அதனால் தான் பல்வேறு பரிகாரங்களை கோரி இந்த விரிவான தாவா வழக்கை தாக்கல் செய்துள்ளார் என்றால் அது பற்றி எனக்கு தெரியாது. P.R.V.Properties-யை பொறுத்த வரை எனக்கும், வாதிக்கும் மட்டும் தான் பிரச்சினை என்றால் சரிதான். வாதியின் மகன் தமிழ்நாடு காவல்துறையில் சார்பு ஆய்வாளராக பணிபுரிந்ததை சாதகமாக பயன்படுத்தி அவருடைய துறைக்கு காவல் துறையின் உயர் அதிகாரிகளுக்கு (Inspector, S.P., D.I.G., D.G.P.) ஆகியோர்களுக்கு 26 முறை புகார் மனுக்களை அனுப்பி உள்ளேன் என்றால் எனக்கு ஞாபகமில்லை. இந்த வாதியை அவர் படிக்காதவர் என்ற நிலையை பயன்படுத்தி அவரை P.R.V.Properties நிறுவனத்தின் பங்குதாரர் என்ற நிலையில் இருந்து விரட்டுவதற்காக அவர் மீதும், அவர் மகன் மீதும் அவருடைய ஆட்கள் மீதும் பல்வேறு குற்றப்புகார்களை நான்

தேவதானப்பட்டி காவல்நிலையத்தில் கொடுத்துள்ளேன் என்றால் சரியல்ல.

P.R.V.Properties நிறுவனத்தில் ஜெகநாதன் என்பவர் மேலாளராக பணியாற்றினார் என்றால் சரிதான். வா.சா.ஆ.-6 முதல் வா.சா.ஆ.-9 ஆவணங்கள் அனைத்திலும் P.R.V.Properties-க்காக விற்பனை செய்த 27 பிளாட்டுக்கள் ஆவணங்களிலும் ஜெகநாதன் என்பவர் சாட்சி கையொப்பம் செய்துள்ளாரா என்றால் வா.சா.ஆ.-6 முதல் வா.சா.ஆ-9 ஆவணங்களில் சாட்சி கையொப்பம் போட்டுள்ளார். P.R.V.Properties-க்காக விற்பனை செய்யப்பட்ட 27 பிளாட்டுக்கள் சம்பந்தப்பட்ட ஆவணங்களிலும், ஜெகநாதன் என்பவர் சாட்சி கையொப்பம் செய்தாரா என்றால் ஞாபகமில்லை. வா.சா.ஆ-18, வா.சா.ஆ.-19 பிளாட்டுகள் P.R.V.Properties-க்காக விற்பனை செய்யப்பட்ட பிளாட்டுக்கள் என்றால் சரியல்ல.

இந்த பிராதை நிராகரிக்க வேண்டும் என I.A.1/2020 மனுவை தாக்கல் செய்தேன் என்றால் சரிதான். அந்த 11.02.2021 அன்று தள்ளுபடி செய்யப்பட்டது என்றால் சரிதான். அந்த உத்தரவை எதிர்த்து உயர்நீதிமன்றத்தில் ஒரு சீராய்வு மனு 1324/2021 தாக்கல் செய்து அது கடந்த 11.02.2021 அன்று தள்ளுபடி செய்யப்பட்டது என்றால் சரிதான். தற்போது என்னிடம் காட்டப்படும் உத்தரவு நகல் அது தான். அந்த சீராய்வு மனு 1324/2021, 22.10.2021-ம் தேதியிட்ட உத்தரவு நகல் வா.சா.ஆ.22 ஆக குறியீடு செய்யப்படுகிறது. அந்த உத்தரவின் பேரில் உச்சநீதிமன்றத்தில் Special Leave Petition 21063.2021 மனு தாக்கல் செய்து 25.04.2022 அன்று தள்ளுபடி செய்யப்பட்டது என்றால் சரிதான். இங்கு காட்டப்படும் உத்தரவு நகல் அது என்றால் சரிதான். அந்த உத்தரவு நகல் வா.சா.ஆ.-23 ஆக குறியீடு செய்யப்படுகிறது. உச்சநீதிமன்றம் வரை சென்று நான் போட்ட மனு தள்ளுபடி செய்யப்பட்ட பின்பும் அந்த உத்தரவை மறைத்து, மறுபடியும் பிராதை நிராகரிக்க கோரி நான் தாக்கல் செய்ய கோரிய மனு கோப்பிற்கு எடுக்காமல் திருப்பப்பட்டது என்றால் ஞாபகமில்லை. கோப்பிற்கு எடுக்காமல் திருப்பப்பட்டதை எதிர்த்து உயர்நீதிமன்றத்தில் CRP.No.

513/2022 தாக்கல் செய்தேன் என்றால் வழக்கறிஞரைக் கேட்டால் தான் தெரியும். இங்கு காட்டப்படும் CRP.No.513/2022 உத்தரவு நகலில் என் மனு தள்ளுபடி செய்யப்பட்டு எனக்கு ரூ.10,000/- அபராதம் விதிக்கப்பட்டது என்றால் சரிதான். அந்த CRP.No.513/2022 உத்தரவு நகல் வா.சா.ஆ.-24 ஆக குறியீடு செய்யப்படுகிறது. இங்கு காட்டப்படும் பட்டா எண் 11234 P.R.V.Propertiesஎன்ற பெயரில் அதன் ஒரு பங்குதாரர் பெருமாள்சாமியின் மகன் ராஜீ என பதிவு செய்யப்பட்டுள்ளது என்றால் அது பொய்யாக தயார் செய்யப்பட்ட பட்டாவாகும். நான் நிலம் வாங்கியதில் இருந்து என் பெயரில் பட்டா எண் 9995 என்று என் பெயரில் தனியாக தான் உள்ளது. என் பட்டாவில் P.R.V.Properties பங்குதாரர் என்று இல்லை. பட்டா எண் 11234 உண்மையான ஆவணம் தான் என்றும், அது பொதுவான ஆவணம் என்றும் என் பெயரில் தான் உள்ளது என்று பொய்யாக சொல்கிறேன் என்றால் சரியல்ல. இங்கு காட்டப்படும் பட்டாவில் என் பெயர் உள்ளது என்றும் மேதகு ஆளுநர் என்றும் குறிப்பிடப்பட்டுள்ளது என்றால் என் பெயர் அதில் உள்ளது. மேற்படி பட்டா தவறானதாகும்.

வா.சா.ஆ.-11 கடிதம் என்னால் எழுதப்பட்ட கடிதம் என்றால் சரியல்ல. நான் எழுதவில்லை. அதில் என் கையொப்பம் இல்லை, அது மோசடியான கையொப்பம் ஆகும். வா.சா.ஆ.12-ன் மூலமாக P.R.V.Properties பிளாட் விற்பதற்காக எங்கள் நிறுவனம் விளம்பரம் கொடுக்கப்பட்டுள்ளது என்றால் நான் என் செலவில் அந்த விளம்பரத்தைக் கொடுத்தேன். வாதி நிலம் தருகிறேன் என்று சொல்லி ஏமாற்றிவிட்டார். வாதி ஒருபோதும் நிலம் தருவதாக சொல்லவில்லை என்றும், மேற்படி விளம்பரத்திற்கு நான் தனிப்பட்ட முறையில் செலவு செய்யவில்லை என்று சொன்னாலும் சரியல்ல. கடந்த 01.04.2012-ல் வா.சா.ஆ.13 வாயிலாக P.R.V.Properties க்கும் வாசா-4 மோகன்தாஸ் என்பவருடன் நில சீர்திருத்த ஒப்பந்தத்திற்கு இந்த வாதி ரூபாய் ஒன்றரை கோடி (ரூ.1,50,00,000/-) செலுத்தினார் என்றால் சரியல்ல. 01.11.2012-ல் வா.சா.5 கருப்பையா வாயிலாக P.R.V.Properties கட்டிட கட்டுமான பணிகளுக்காக (இரண்டு

வீடுகள்) இந்த வாதி வா.சா.ஆ.-14 மூலமாக ரூபாய் நாற்பத்தி மூன்று இலட்சத்தி நாற்பத்தி ஆறாயிரம் (ரூ.43,46,000/-) பல்வேறு தேதிகளில் செலுத்தினார் என்றால் சரியல்ல. 10.05.2013-ல் வாதியிடம் இருந்து வா.சா.ஆ.-8-க்கு கிரைய முன்தொகையாக ரூபாய் முப்பத்தாறு இலட்சம் (ரூ.36,00,000/-) வாதியிடம் இருந்து நவநீதகிருஷ்ணன் என்பவர் வா.சா.ஆ.-15-ன் வாயிலாக பெற்றுக்கொண்டார் என்றால் சரியல்ல. 01.04.2012 மற்றும் 01.10.2012 ஆகிய தேதியிட்ட வேலை ஒப்பந்தத்திற்காக கூ.அசோக்குமார் என்பவருக்கு P.R.V.Properties பங்குதாரர் நிறுவனத்தில் இருந்து செலுத்தப்பட்ட ரூபாய் இரண்டு கோடியே, எழுபத்தி நான்கு இலட்சத்தில் ரூபாய் இரண்டு கோடியே, ஏழு இலட்சத்தி முப்பத்தி ஐந்தாயிரம் இந்த வாதியால் தான் அசோக்குமாருக்கு வா.சா.ஆ.-16-ன் வாயிலாக பல்வேறு தேதிகளில் செலுத்தப்பட்டது என்றால் சரியல்ல. பி.வா.சா.ஆ.23, மற்றும் பி.வா.சா.ஆ.24-ல் சொத்து விவரம் எதுவும் காண்பிக்கப்படவில்லை என்றால் சரியல்ல.

பி.வா.சா.ஆ.-9, 10, Arbitration O.P.32.2020இ 37.2020 இந்த விரிவான தாவாவை பார்த்துக் கொள்ளவும் கொரோன காலம் என்பதாலும் கைவிடப்பட்டது என்று சொன்னால் சரியல்ல.

Writ Petition.12260/2019-ல் இறுதி உத்தரவு பிறப்பிக்கப்பட்டு, அதில் P.R.V.Properties பங்குதாரர் நிறுவனத்திற்கான சொத்துக்கள் வாதி மற்றும் பிரதிவாதியால் பெறப்பட்டது என ஊர்ஜிதம் செய்யப்பட்டது என்றால் சரியல்ல. P.R.V.Properties பங்குதாரர் நிறுவனத்தின் பெயரில் I.T. return கணக்கு உள்ளது என்றால் சரிதான். வாதி முன்னும், பின்னும் உள்ள நிலத்தை தருகிறேன் என்று கூறியதால் I.T. return, P.R.V.Properties பெயரில் வைத்திருந்தோம். வா.சா.ஆ.-1-ன் படி இந்த வாதியானவர் எனக்கு சமமாக முதலில் ரூ.5,00,000/-மும், பின்னர் பல்வேறு தேதிகளில் பணமாக என்னிடமும் ஒப்பந்த வேலைகள் மற்றும் கட்டிட வேலைகளுக்காகவும் நேரடியாக ஒப்பந்ததாரர்களிடமும் பல்வேறு தேதிகளில் பணம் செலுத்தி, இதுவரை மொத்தம்

ரூ.6,68,81,000/- இதுவரை செலுத்தி மேற்படி நிறுவனத்தில் பங்களிப்பு செய்துள்ளார் என்று சொன்னால் சரியல்ல. வாதி P.R.V.Properties பங்கு நிறுவனத்திற்கு பணம் கொடுக்கவில்லை என்று வழக்கறிஞர் அறிவிப்பு இதுவரை அனுப்பி உள்ளேனா என்றால் அனுப்பவில்லை. Arbitration -ல் சொல்லியுள்ளேன். P.R.V.Properties பங்கு நிறுவனம் இன்றுவரை ஊர்ஜிதத்தில் உள்ளது என்றால் சரியல்ல. P.R.V.Properties எப்போதும் நடைமுறையில் இல்லை. கற்பனையானது. P.R.V.Properties நடைமுறையில் இல்லை என்று வாதிக்கு இதுவரை வழக்கறிஞர் அறிவிப்பு அல்லது சட்ட நடவடிக்கை எடுத்துள்ளேனா என்றால் ஞாபகம் இல்லை. P.R.V.Properties பங்குதாரர் நிறுவனம் ஊர் ஜிதத்தில் இல்லாமல் இருந்திருந்தால் அது சம்பந்தமாக நான் சட்ட நடவடிக்கை எடுத்து வாதியை பங்குதாரர் என்ற நிலையில் இருந்து அவரை நீக்குவதற்கு நடவடிக்கை எடுத்திருப்பேன் என்றால் சரியல்ல.

<u>P.W.-7</u>

எனக்கு வருமான வரி கணக்கு உண்டு என்றால் சரிதான். அதேபோல P.R.V.Properties-க்கும் வருமான வரி கணக்கு உண்டு என்றால் சரிதான். வாதி, முத்துலட்சுமிக்கு தனியாக வருமான வரி கணக்கு இல்லை என்றால் எனக்கு அது பற்றி தெரியாது. எனக்கு கொடுக்கப்படும் தொகைகளுக்கு வு.னு.ளு பிடிக்கப்பட்டு என்னுடைய கணக்கில் கட்டப்பட்டுள்ளது என்றால் சரிதான். T.D.S பிடிக்கப்பட்டு என்னுடைய கணக்கில் கட்டப்பட்ட தொகை P.R.V.Properties நிறுவனத்தின் கணக்கில் இருந்து வந்தது என்றால் சரிதான்.

வா.சா.ஆ.-16-ல் உள்ள இரண்டு ஒப்பந்தங்களில் உள்ள வேலை முடிந்ததற்காக மொத்த தொகை ரூ.2,74,00,000/-ற்கு 1 % TDS பிடிக்கப்பட்டு என் கணக்கில் வரவு வைக்கப்பட்டுள்ளது என்றால் சரிதான். வா.சா.ஆ.-16-ன் படி ரூ.2,07,35,000/- பெற்றுக்கொண்டதாக கணக்கில் எழுதப்பட்டுள்ளது என்றால் சரிதான். மேற்படி தொகையை வாதி முத்துலட்சுமியிடம் இருந்து பெற்றுக்கொண்டேன். என் கணக்கில் உள்ள ரூ.2,74,00,000/-ல் ரூ.2,07,35,000/- நீங்கலாக மீதி தொகையை

யாரிடம் இருந்து பெற்றுக்கொண்டேன் என்றால் பிரதிவாதியிடம் இருந்து TDS நீங்கலாக ரூ.63,91,000/- தொகையை பிரதிவாதி ரா ஜீவிடம் இருந்து பெற்றுக்கொண்டேன்.

என்னுடைய கணக்குகளிலும், வருமான வரி கணக்குகளிலும் உள்ள மொத்த தொகையும் P.R.V.Propertiesல் இருந்து தான் வந்தள்ளது என்று எழுதப்பட்டுள்ளது என்றால் சரிதான்.

9.3.Thus, abundant evidence available on record prima facie establishes that the properties found in the name of the partnership firm are partnership properties and the plaintiff has contributed as stated in the plaint.

9.4.Section 14 of the Indian Partnership Act, 1932 provides that property acquired for the purposes of, and in the course of, the business of the firm is, in the absence of a contrary intention, to be treated as the property of the firm. When the title deeds stand in the name of the partnership firm and the transactions have throughout been conducted in the name of the firm, a statutory presumption arises that the properties constitute partnership assets. The burden of rebutting that presumption lies upon the person asserting otherwise. The defendant has not disputed that the sale deeds are standing in the name of the partnership firm. His defence, however, is that although the properties were purchased in the name of the firm, the entire sale consideration was paid exclusively by him from his personal funds. Once such a plea is taken, the burden squarely lies upon the defendant to establish, by cogent and convincing evidence, that the acquisitions standing in the name of the partnership firm were in fact made exclusively from his personal funds and were never intended to constitute partnership assets. Except his bare assertion, no satisfactory evidence has been produced to establish that the properties, though purchased in the name of the partnership firm, were his exclusive and self-acquired properties. Except certain bank transactions, no independent documentary evidence has been produced to substantiate the said contention. Even from the bank statements, it is not clear that the amounts allegedly transferred by the defendant were utilised for purchasing the properties found in the name of the partnership firm. Therefore in all aspects, the defendant has failed to discharge that burden. Consequently, the finding recorded by the learned trial Judge that the plaintiff had failed to establish her contribution and that the suit properties were not partnership assets cannot be sustained. Therefore, this Court finds that the learned trial Judge failed to properly appreciate the aforesaid documentary and oral evidence and consequently arrived at an erroneous finding that the plaintiff had not contributed towards the purchase of the properties in the name of the partnership firm. In view of the above, the said finding of the learned trial Judge is liable to be set aside. Accordingly, this Court holds that the suit properties constitute partnership properties and that the plaintiff, being an admitted partner of the firm and having invested in the partnership business, is entitled to seek dissolution of the partnership, rendition of accounts and consequential division of the partnership assets in accordance with law.

10.**Discussion on payment of Court fee:**

10.1.This Court also finds that the finding of the learned trial Judge regarding non payment of court fee is equally un-sustainable. The learned trial Judge proceeded on the footing that the plaintiff was out of possession of the properties and therefore ought to have sought a declaration of title and recovery of possession while paying court fee under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act.

10.2.The said reasoning overlooks the settled principle governing partnership property. Possession of partnership assets by one partner is, in the eye of law, possession on behalf of all the partners until dissolution and settlement of accounts. A partner cannot ordinarily be regarded as being excluded from possession merely because another partner is managing or physically controlling the partnership assets. Therefore, the plaintiff cannot be treated as a person out of possession requiring a separate relief of declaration and recovery of possession in respect of the partnership properties. Accordingly, the finding of the learned trial Judge that the suit was liable to fail for want of proper court fee under Section 37(2) of the Act is also liable to be set aside.

11.Discussion on the principle of Resjudicata and order II Rule 2 of CPC:

11.1.The principal question is whether the present suit is barred by the provisions of Order II Rule 2 of the Code of Civil Procedure, or by the doctrine of *res judicata*. According to the learned Senior Counsel appearing for the defendant, the reliefs of dissolution of partnership, rendition of accounts, and partition of the partnership properties had already been decided by the learned Arbitrator in Claim Petition No.145 of 2019 in Arbitration O.P. No.39 of 2019. The learned Arbitrator had found that the plaintiff's claim for dissolution of the partnership was barred by limitation and, therefore, the same issue could not be re-agitated in the pending suit. It was further contended that, once the plaintiff had agreed to pursue the remedy before the Arbitrator and the issue had been adjudicated therein, the finding of the Arbitrator that the claim was barred by limitation had attained finality. The challenge to the arbitral award in Arbitration O.P. No.32 of 2020, on the file of the learned Principal District Judge, Theni, was dismissed on the ground of lack of jurisdiction, and the said order was also confirmed by this Court in the revision petition. Therefore, according to the learned Senior Counsel, the civil court has no jurisdiction to entertain the present suit, as the same is barred by the principles of res judicata and Order II Rule 2 CPC. It was further submitted that the said position had been elaborately considered by the learned trial Judge, who had rendered findings in paragraphs 23 to 26 of the impugned judgment. According to the learned Senior Counsel, the findings of the learned trial Judge are in accordance with law and, therefore, there is no scope to interfere with the well-considered judgment.

11.2.The said contention was resisted by the learned Senior Counsel appearing for the plaintiff. According to him, the arbitral proceedings did not result in any adjudication of the dispute on merits. On the contrary, the learned Arbitrator, after finding that the dispute involved complicated questions, had held that the same required adjudication by the competent civil court. Therefore, the incidental observation regarding limitation could not operate as res judicata against the plaintiff in the present suit. It was further contended that treating such an incidental finding as conclusive would cause serious prejudice and injustice to the plaintiff, who had invested money in the partnership and had been deprived of the enjoyment of her legitimate share in the partnership properties.

12.Upon a thorough analysis of the pleadings, the entire documentary and oral evidence, and the materials available on record, this Court is of the view that the learned Trial Judge has failed to consider certain crucial aspects governing the field, particularly the applicability of the principles of *res judicata* and *Order II Rule 2*

CPC, as well as the legal effect of the termination of the arbitration proceedings under *Section 32(2)(c) of the Arbitration and Conciliation Act, 1996.* In the above circumstances, the conclusion of the learned Trial Judge that the suit was barred by *Order II Rule 2 CPC and Section 11 CPC* cannot be sustained in law and Consequently, the dismissal of the suit is also not legally sustainable .The said findings, having been rendered without examining the relevant pleadings, the chronology of the proceedings, the issues framed, and the precise nature and legal effect of the termination of the arbitration proceedings, require reconsideration for the reasons set out hereunder.

13. For a proper appreciation of the legal position primarily it was necessary to extract and examine the relevant portion of the arbitration award:

14.Relevant portion of the termination order of the Arbitrator:

> *119. The copy of the notice of dissolution sent by the claimant to the respondent is produced and marked as Ex. P.15. To this notice, the respondent sent a reply which is marks as Ex. P.16. In this reply the respondent though denied the amount and the sources of amount invested as capital by the claimant into the business, has admitted the fact of the execution of the partnership deed in which the claimant is given the status of a partner.*
>
> *120. Considering all the above facts and circumstance, the*

submissions of the respondent that the claimant is not a partner of the firm cannot be accepted in to to. There are sufficient prima facie grounds to hold that the partnership is still in existence. But at the same time, to arrive and to decide that whether the claimant invested capital or contributed landed properties in to the business of the firm and whether the claimant is having any rights over the properties of the firm or not, a judicial trial is essentially required.

129. What the counsel contended in his argument based on the above ruling are applicable only to file a suit before a civil court and not for referral of dispute to arbitration. So far as reference to arbitration in terms of the clauses set forth in a partnership deed, the period of limitation is three years from the date of dispute arose.

130. It is the case of the claimant that the respondent attempted to sell the partnership firm's properties without his knowledge and failed to give credit of the amount due to the claimant in the books of accounts and therefore he raised objections to deal with the firm's property etc.

131. The claimant also not satisfied with his partner, the respondent, filed a suit for injunction restraining the respondent from dealing with the firm's properties. The cause of action for this suit was arose before 31.12.2015 on various days and at last the claimant has lodged an objection petition to the Sub Registrar of Batlagundu Sub Registration office on 31.12.2015. A copy of the plaint in O.S.1/16 is filed as Ex.R40. In the plaint of this suit, it has been stated that he filed the objection petition before the Sub Registrar was filed on 31.12.2015. Accordingly, as per the claimant *himself the cause of action to refer them to arbitration was commenced on 31.12.2015 or before. When the respondent filed an application in IA No. 78/16 in the said O.S. No. 1/16 to refer the dispute to arbitration but the claimant objected the petition and not willing for referring the matter to arbitration.*

132. A copy of the affidavit and petition filed by the respondent and counter filed there in by the claimant are marked as Ex.R43 & R 44. When this petition was dismissed by the District Munsif, the matter was taken up to the Madurai Bench of Madras High Court in CRP(MD) 49/17 and after being failed in all proceedings, the petitioner has approached the Honourable Madurai Bench of Madras High Court for the first time for the appointment of Arbitrator. This petition in OP.No .348/19 was filed on 19.03.2019 after completing three years from 31.12.2015 on which date the cause of action arose as per the claimant.

133. Thus, in view of the findings and principles laid down by the Honourable High Courts and the Supreme Court, in the judgments referred supra as submitted by the learned counsel for the claimant as well as by the counsel for the respondent, it can be safely concluded that though the limitation period for filing civil suit before a proper civil court starts from the date of dissolution of the partnership, since the reference of dispute to the arbitration was made after three years from the date of cause of action arose for reference to arbitration and as such the approach for referral to arbitration is barred Under Art. 137 and Sec. 3 of Limitation Act 1963.

144. In result, in the view of the above discussions and *considering the legal principles laid down by the Honourable High Courts and the Supreme Court of India the continuation of this arbitration proceedings is barred under Article 137 of Limitation Act and thus become impossible and unnecessary and therefore, this claim petition is terminated under section 32(2) (c) of Arbitration and Conciliation Amendment Act 2015. However, both the parties shall bear their respective cost of the proceedings.*

15.The learned Arbitrator terminated the arbitral proceedings under Section 32(2)(c) of the Arbitration and Conciliation Act, 1996, principally on the ground that the invocation of arbitration and the appointment of the Arbitrator itself is beyond the period of limitation prescribed under Article 137 of the Limitation Act, 1963. In substance, the learned Arbitrator proceeded on the premise that the very reference to arbitration was barred by limitation and, on that basis, brought the arbitral proceedings to an end. This Court is unable to agree with the said approach. In this aspect, this Court is duty bound to discuss on the basic concept of Arbitration in consonance with various provisions of the Arbitration and Conciliation Act and guiding principles of Hon'ble Supreme Court.

16. Section 21 of the Arbitration and Conciliation Act, 1996, specifically provides that, unless otherwise agreed by the parties, arbitral proceedings in respect of a particular dispute commences on the date on which a request for that dispute to

be referred to arbitration is received by the rival party to the Arbitration agreement. The said principle was elaborately discussed by the Hon'ble Supreme Court upon consideration of Section 37(3) old Act 1940 in the case of J.C. Budhraja v. Orissa Mining Corpn. Ltd., reported in (2008) 2 SCC 444 and it was held that Section 37(3) of the 1940 Act provides that for the purpose of the Limitation Act, an arbitration is deemed to have commenced when one party to the arbitration agreement serves on the other party, a notice requiring the appointment of an arbitrator and relevant para reads as follows :

> "*26. Section 37(3) of the Act provides that for the purpose of the Limitation Act, an arbitration is deemed to have been commenced when one party to the arbitration agreement serves on the other party thereto, a notice requiring the appointment of an arbitrator.*

17. The same has been reiterated by the Hon'ble Supreme Court in the case of ***State of Goa v. Praveen Enterprises***, ***(2012) 12 SCC 581*** in the following the relevant portion of the judgment:

> *16.The purpose of Section 21 is to specify, in the absence of a provision in the arbitration agreement in that behalf, as to when an arbitral proceeding in regard to a dispute commences. This becomes relevant for the purpose of Section 43 of the Act. Sub-section (1) of Section 43 provides that the Limitation Act, 1963 shall apply to arbitrations as it applies to proceedings in courts. Sub-section (2) of Section 43 provides that for the purposes of Section 43 and the*

Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred to in Section 21 of the Act.

18.Therefore, for the purpose of the Limitation Act, Arbitration is deemed to have commenced when one party to the Arbitration agreement serves a notice upon the other parties requiring the appointment of an Arbitrator under Section 21 of the Arbitration and Conciliation Act, 1996. In the event of a party's failure to accede the request within the period of 30 days from the issuance of the notice, the cause of action to initiate Arbitration proceedings, would commence and the same falls with in the domain of the Court exercising jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996 in respect of the particular claims to be referred to the Arbitration as contemplated by the Section 21 of the Arbitration and Conciliation Act. The period of limitation for filing the application under Section 11 is governed by the Article 137 of the Limitation Act, in view of the absence of the period of limitation mentioned in the section 11 of the Arbitration and Conciliation Act itself. The same was clearly laid down by the Hon'ble Supreme Court in the case of ***BSNL v. Nortel Networks*** reported in ***2021(5) SCC 738*** with a suggestion to the Government to provide the period of limitation for filing the application in the Section 11 of Arbitration and Conciliation Act 1996 and the relevant paragraph is as follows:

15. *It is now fairly well-settled that the limitation for filing an* *application under Section 11 would arise upon the failure to make the appointment of the arbitrator within a period of 30 days from issuance of the notice invoking arbitration. In other words, an application under Section 11 can be filed only after a notice of arbitration in respect of the particular claim(s)/dispute(s) to be referred to arbitration [as contemplated by Section 21 of the Act] is made, and there is failure to make the appointment.*

53.1. *The period of limitation for filing an application under Section 11 would be governed by Article 137 of the First Schedule of the Limitation Act, 1963. The period of limitation will begin to run from the date when there is failure to appoint the arbitrator. It has been suggested that Parliament may consider amending Section 11 of the 1996 Act to provide a period of limitation for filing an application under this provision, which is in consonance with the object of expeditious disposal of arbitration proceedings.*

19.The Court while exercising the jurisdiction under Section 11 of Arbitration and Conciliation Act at the referral stage, has power to find out whether the claim is either ex facie barred by limitation or dead claim as held by the Hon'ble Supreme Court in the case of Vidya Drolia v. Durga Trading Corpn., reported in 2021 (2) SCC 1 and the same was followed by the Hon'ble Supreme Court in the case of BSNL v. Nortel Networks reported in 2021(5) SCC 738.

19.1.The relevant paragraph in the case of ***Vidya Drolia v. Durga Trading Corpn.***, reported in ***2021 (2) SCC 1*** as follows:

"148. Section 43(1) of the Arbitration Act states that the

Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Sub-section (2) states that for the purposes of the Arbitration Act and the Limitation Act, arbitration shall be deemed to have commenced on the date referred to in Section 21. Limitation law is procedural and normally disputes, being factual, would be for the arbitrator to decide guided by the facts found and the law applicable. The court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. All other cases should be referred to the Arbitral Tribunal for decision on merits.

19.2.The relevant paragraph in the case of **BSNL v. Nortel Networks** reported in 2021(5) SCC 738 as follows.

While exercising jurisdiction under Section 11 as the judicial forum, the court may exercise the prima facie test to screen and knockdown ex facie meritless, frivolous, and dishonest litigation. Limited jurisdiction of the courts would ensure expeditious and efficient disposal at the referral stage. At the referral stage, the Court can interfere "only" when it is "manifest" that the claims are ex facie time-barred and dead, or there is no subsisting dispute.

***53.2.** In rare and exceptional cases, where the claims are ex facie time-barred, and it is manifest that there is no subsisting dispute, the Court may refuse to make the reference.*

20.Therefore, where the Court, while considering an application under Section 11, finds that the claim is not ex facie barred by limitation and that there is no dead claim, the Arbitrator would have jurisdiction to adjudicate the dispute. Section 11 application cannot be confused or conflated with the limitation applicable to the substantive claims and two periods operate in different fields. The limitation for the substantive claim is prescribed by the applicable Articles of the Limitation Act, whereas Section 11 application is governed by Article 137 of the Limitation Act. The Hon'ble Supreme Court in the case of BSNL v. Nortel Networks reported in 2021(5) SCC 738, also reiterated the said principle in the paragraph 16 which reads as follows:

> *16.The period of limitation for filing a petition seeking appointment of an arbitrator(s) cannot be confused or conflated with the period of limitation applicable to the substantive claims made in the underlying commercial contract. The period of limitation for such claims is prescribed under various Articles of the Limitation Act, 1963. The limitation for deciding the underlying substantive disputes is necessarily distinct from that of filing an application for appointment of an arbitrator.*

21.Accordingly once an Arbitrator has been appointed under Section 11, it is duty of the Arbitrator to adjudicate the claim. If the Arbitrator was of the view that the dispute involved issues which were incapable of being adjudicated upon by an arbitral tribunal, such a conclusion could be reached only on the basis of a legally recognised ground of non-arbitrability. In this regard, it is relevant to refer to the judgment of the three-Judge Bench of the Hon'ble Supreme Court reported in (2021) 2 SCC 1, wherein the Hon'ble Supreme Court has drawn a clear distinction between a non-arbitrable claim and a non-arbitrable subject matter. While considering the question of non-arbitrable claim, the Hon'ble Supreme Court has laid down a fourfold test, one of which is whether the subject matter of the dispute is expressly or, by necessary implication, rendered non-arbitrable by a mandatory statutory provision.

35.1.Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1

31. *We are clearly bound by the dictum of the Constitution Bench judgment in SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] that the scope and ambit of court's jurisdiction under Section 8 or 11 of the Arbitration Act is similar. An application under Section 11 of the Arbitration Act need not set out in detail the disputes or the claims and may briefly refer to the subject-matter or broad contours of the dispute. However, where judicial proceedings are initiated and pending, specific details of the claims and disputes are normally pleaded and, therefore, the court or the judicial authority has the advantage of these details. There is a difference between a non-arbitrable claim and non-arbitrable subject-matter. Former may arise on account of scope of the arbitration agreement and also when the claim is not capable of being resolved through arbitration. Generally non-arbitrability of the subject-matter would relate to non-arbitrability in law......*

22.Therefore without any legal bar, the arbitrator has no jurisdiction to *terminate the proceedings under Section 32(2)(c) of the Arbitration and Conciliation Act.* The Hon'ble Supreme Court in the case of ***Harshbir Singh Pannu vs Jaswinder Singh*** reported in 2025 INSC 1400 judgment has laid down the principles that the statutory scheme of Section 32(2)(c) is materially distinct from the making of an arbitral award on the merits of the disputes referred to arbitration.

23. To discuss the case on merits, this Court respectfully observed the following guidances from the above mentioned principles laid down by the Hon'ble Supreme Court to the provision of the Section 21, 11, 32(2)(c), of the Arbitration and Conciliation Act:

> ***The commencement of arbitration under Section 21 and the question of limitation governing the substantive relief claimed in a suit cannot be conflated without examining the nature of the cause of action and the relief sought.***

(i) where *the Arbitrator adjudicates the claim* and finally rejects it as barred by limitation, such adjudication may constitute an arbitral award;

(ii) where the Arbitrator, invoking Section 32(2)(c), terminates the arbitral proceedings on the ground that continuation has become unnecessary or impossible, the order remains an order of termination and does not become an award merely because limitation is referred to as the reason for such termination;

(iv) where the order merely records that the proceedings are terminated and does not grant or refuse the substantive relief claimed, it bears the character of a termination order rather than that of an award.

24. The partnership agreement was entered into by the parties for carrying on business jointly on the basis of mutual agreement and for sharing the business and profits in accordance with the terms agreed between them. The very foundation of a partnership is mutual trust and confidence between the partners. The occasion for seeking dissolution would arise when such mutual trust and confidence is eroded or when circumstances arise warranting dissolution in accordance with the provisions of the Partnership Act. It is a settled proposition that the cause of action for dissolution of a partnership at will arises upon communication of the notice of dissolution issued under Section 43 of the Indian Partnership Act which reads as follows:

> ***43. Dissolution by notice of partnership at will.—***
> (1)*Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.*
> (2)*The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.*

25.A plain reading of Section 43 makes crystal clear that a partnership at will is dissolved when a partner gives notice in writing to all the other partners expressing his intention to dissolve the firm. The firm stands dissolved from the date specified in the notice as the date of dissolution or, where no such date is specified, from the date on which the notice is communicated to the other partners. In this context, reference may also be made to the judgment of the Hon'ble Supreme Court reported in ***AIR 1963 SC 1165, w***herein the scope and effect of Section 43 of the Partnership Act have been explained and the relevant paras as follows:

> ***11. .....*** *In a partnership at will, if one of the partners seeks its dissolution, what he wants is that the firm should be wound up, that he should be given his individual share in the assets of the firm (or may be that he should be discharged from any liability with respect to the business of the firm apart from what may be found to be due from him after taking accounts) and that the firm should no longer exist. He can call for the dissolution of the firm by giving a notice as provided in sub-section (1) of Section 43 i.e. without the intervention of the court, but if he does not choose to do that and wants to go to the court for effecting the dissolution of the firm, he will, no doubt, be bound by the procedure laid down in Order 20, Rule 15 of the Code of Civil Procedure, which reads thus:*
>
> *"Where a suit is for the dissolution of a partnership or the taking of partnership accounts, the Court, before passing a final decree may pass a preliminary decree declaring the proportionate share of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, as much accounts to be taken, and other acts to be done, as it thinks fit."*

This rule makes the position clear. No doubt, this rule is of general application, that is, to partnerships at will as well as those other than at will; but there are no limitations in this provision confining its operation only to partnerships other than those at will. Sub-section (1) of Section 43 of the Partnership Act does not say what will be the date from which the firm will be deemed to be dissolved. For ascertaining that, we have to go to sub-section (2) which reads thus;

"The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice."

12. *Now, it will be clear that this provision contemplates the mentioning of a date from which the firm would stand dissolved. Mentioning of such a date would be entirely foreign to a plaint in a suit for dissolution of partnership and therefore such a plaint cannot fall within the expression "notice" used in the sub-section. It would follow therefore that the date of service of a summons accompanied by a copy of a plaint in the suit for dissolution of partnership cannot be regarded as the date of dissolution of partnership and Section 43 is of no assistance.*

13. *Even assuming, however, that the term "notice" in the provision is wide enough to include within it a plaint filed in a suit for dissolution of partnership, the sub-section itself provides that the firm will be deemed to be dissolved as from the date of communication of the notice. It would follow, therefore, that a partnership would be deemed to be dissolved when the summons accompanied by a copy of the plaint is served on the defendant,* *where there is only one defendant, and on all defendants, when there are several defendants. Since a partnership will be deemed to be dissolved only from one date, the date of dissolution would have to be regarded to be the one on which the last summons was served. Now, if the High Court wanted to give the benefit of the provisions of Section 43 to any of the parties-defendants before it, it should have borne in mind the full implications of those provisions. We have no material on record for ascertaining the date on which the last summons was served in this case. Since that date is not known or could have been known by the High Court, it was in error in holding that the suit was barred by time.*

26. The above principle laid in ***AIR 1963 SC 1165,*** has been consistently followed in subsequent decisions.

27. With the guidance of the aforesaid principles, in order to appreciate the points for determination arising for consideration in the context of Section 43 of the Partnership Act, Sections 11 and 32(2)(c) of the Arbitration and Conciliation Act, 1996, and Article 137 of the Limitation Act, as well as the principles governing arbitrability, the jurisdiction of the Arbitral Tribunal, and the distinction between an arbitrable dispute and a non-arbitrable claim or subject matter, this Court considers it appropriate, at the outset, to examine the chronology of the proceedings, the nature and scope of the claims raised by the parties at each stage, and the orders

passed by the respective Courts**.**

28.The records disclose that on 04.01.2016 the plaintiff initially instituted O.S.No.1 of 2016 on the file of the learned District Munsif, Periyakulam, seeking only the relief of permanent injunction restraining the defendant from alienating the properties belonging to the partnership firm. During the pendency of the said suit, the defendant filed I.A. No.78 of 2016 invoking the arbitration clause contained in the partnership deed and sought reference of the disputes to arbitration. The said application was dismissed by the learned District Munsif. Challenging the said order, the defendant preferred C.R.P.(MD) No.49 of 2017 before this Court. Taking the advantage of the said situation, the defendant continued the alienation and denied the right of the plaintiff in the partnership and hence, the plaintiff issued notice of dissolution of partnership on 03.03.2017 and the defendant did not act on the basis of the notice, on 24.04.2017 the plaintiff filed the present suit in O.S.No.21 of 2017 for the relief of declaration that the partnership of the P.R.V.Properties was dissolved in pursuance of the notice dated 03.03.2017, rendition of account, preliminary decree for partition and injunction restraining the defendant from alienating the remaining available suit scheduled partnership properties.

29. Significantly, before the Civil Revision Petition was decided, the plaintiff issued a statutory notice dated 03.03.2017 expressing her intention to dissolve the partnership, which is a partnership at will, from 04.03.2017. It was only thereafter that the plaintiff instituted the present suit seeking dissolution of the partnership, rendition of accounts, partition of the partnership assets and consequential permanent injunction restraining the defendant from alienating the remaining partnership properties. The plaint in the present suit specifically states that, despite the pendency of the earlier proceedings, the defendant continued to alienate the partnership properties. Consequently, while excluding the properties already sold, the plaintiff sought dissolution of the partnership and division of the remaining partnership assets. Subsequently, after the present suit had already been instituted, this Court allowed C.R.P.(MD).No.49 of 2017 and directed the parties to pursue the remedy of arbitration in terms of the arbitration clause. Pursuant thereto, the earlier injunction suit came to be closed. Pendency of the suit, the defendant continued the alienation affecting the right of the plaintiff in the partnership properties. Thereafter, on 19.03.2019, the plaintiff herself initiated proceedings under Section 11 of the Arbitration and Conciliation Act, 1996, before this Court seeking appointment of an Arbitrator in A.R.O.P.No.348 o 2019 and there was no objection on the side of the defendant to appoint the arbitrator. There is no question of limitation raised at the time of appointing arbitrator. Arbitrator was appointed. After the appointment of

arbitrator to arrest further alienation pending the suit, the plaintiff filed the claim petition before the arbitrator in Claim petition No.145 of 2019 to declare that the partnership firm is dissolved, to appoint receiver to wind up the business of the firm properties in accordance with law, to settle the accounts of the firm between the plaintiff and the defendants and to give a credit of a sum of Rs.6,99,86,000/- and costs of the arbitral proceedings. On 20.03.2020 the learned Arbitrator, despite the pendency of the suit, while recording a categorical finding that the disputes involved complicated questions of fact and law requiring judicial trial, proceeded to hold that since the reference of dispute to the arbitration was made after three years from the date of cause of action for the reference to the arbitration and as such the approach for referral to the arbitration is barred under Article 137 and Section 3 of the Limitation Act, and *the arbitration proceedings was terminated under section 32(2)(c) of Arbitration and Conciliation Amendment Act 2015.*

30. From a reading of the order terminating the arbitration proceedings extracted in the earlier part of this judgment, it is clear that the learned Arbitrator proceeded on the premise that, since the dispute between the partners arose in the year 2015, the cause of action for invoking the arbitration clause and initiating the arbitration proceedings must necessarily be taken to have arisen in the year 2015. On that basis, the learned Arbitrator concluded that, as the Arbitration Original

Petition came to be filed only in the year 2019, the claim petition was barred by limitation under Article 137 of the Limitation Act, 1963, In the considered view of this Court, the said finding is factually and legally unsustainable. The mere fact that a dispute arose between the partners in the year 2015 cannot, by itself, determine the commencement of limitation for every claim subsequently raised in the arbitration proceedings. The question of limitation has to be examined with reference to the nature of the claim, the accrual of the corresponding cause of action, the terms of the arbitration agreement, and the circumstances in which the right to seek the particular relief arose. The learned Arbitrator, by treating the year 2015 as the starting point for limitation without undertaking such an examination, has proceeded on an erroneous premise in applying Article 137 of the Limitation Act, 1963. In view of the above circumstances, as per Section 4 of the Limitation Act, the period between the decision in I.A.No.78 of 2016 rendered by the Hon'ble High Court on 13.07.2017 and closure of the suit on 06.12.2018 to refer the matter to arbitrator has to be excluded. Therefore, the mere fact that certain events had occurred in the year 2015 would not, by itself, justify a conclusion that the plaintiff had not taken steps to appoint arbitrator when the suit had been filed in OS 1 of 2016 and in said suit, question to invoke clause of arbitration had been raised and answered. The question of limitation had to be determined having regard to the nature of the cause of action, the relevant provisions of the Limitation Act, and the statutory scheme governing dissolution of partnership. The learned Arbitrator also observed that the limitation for the claim of dissolution of partnership is covered under specific article of limitation Act and without adjudicating the claim after holding in paragraph No.120 that to arrive and to decide that whether the claimant invested the capital or contributed the land and properties into the business of firm and whether the claimant is having any right over the properties of the firm or not, a judicial trial is essentially required, the arbitrator has terminated as barred by limitation. Therefore the learned Arbitrator, having proceeded on the premise that the dispute involved a non-arbitrable claim, ought not to have terminated the proceeding of arbitration vide proceeding dated 20.03.2020 holding that reference was barred by limitation under article 137 of limitation act and consequently the learned trial judge has held that the plaintiff is not entitled to relief claimed in the plaint on the reasoning that the same has been barred by resjudicata and Order II CPC.

31.To consider the issues of **res judicata**,This court recapitulates the meaning of resjudicata and the principles laid down by the Honourable supreme Court hereunder:

31.1.Union of India v. Nanak Singh, 1968 SCC OnLine SC 77 has held as follows:

__5.__ This Court in Gulabchand Chhotalal Parikh v. State of Gujarat1 observed that the provisions of Section 11 of the Code of Civil Procedure are not exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit, and on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. There is no good reason to preclude such decisions on matters in controversy in writ proceedings under Article 226 or Article 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. The Court in Gulabchand case1 left open the question whether the principle of constructive res judicata may be invoked by a party to the subsequent suit on the ground that a matter which might or ought to have been raised in the earlier proceeding but was not so raised therein, must still be deemed to have been decided.

__6.__ If the order of the High Court in appeal from the order in the writ petition operated constructively as res judicata, it might have been necessary to consider the question which was left open by the Court in Gulabchand case1. But in our view the judgment in the *previous case operates by express decision as res judicata. It is true that in order that the previous adjudication between the parties may operate as res judicata, the question must have been heard and decided or that the parties must have an opportuntiy of raising their contentions thereon.In the present case, Gurdev Singh, J., dealt with the question in some detail and held that Mr Kane had no authority to terminate the employment of Nanak Singh. The High Court in appeal thought that the appeal could be disposed of only on the first ground, and they recorded no express finding on the second ground. But once the appeal was allowed and the petition was dismissed, the dismissal of the petition operated as a rejection of both the grounds on which it was founded. The judgment of the Privy Council on which reliance was placed by counsel for Nanak Singh — Abdullah Ashgar Ali Khan v. Ganesh Dass2 has, in our judgment, no application. In that case a suit was dismissed by the Court of the Judicial Commissioner on the view that its constitution was defective, and no opinion on the merits of the dispute between the parties was expressed. The judgment of the Judicial Commissioner was held not to operate as res judicata in a subsequent suit between the parties to the previous suit, because the dispute was not decided on its merits in the previous suit expressly or even by implication. It is unnecessary on that view to adjudicate upon the question whether Mr Kane had authority to determine the employment of Nanak Singh.*

31.2. *Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy*, (1970) 1 SCC 613 at page 617

> *5... An issue of fact or an issue of mixed law and fact decided by a competent Court is finally determined between the parties and cannot be re-opened between them in another proceeding.* ***<u>The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata</u>****.*
>
> ***9.*** *A question of jurisdiction of the Court, or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit.*
>
> ***10.*** *A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment, operate as res judicata. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise.*
>
> ***11.*** *... Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.*

31.3. In the case of ***Canara Bank v. N.G. Subbaraya Setty,*** reported in ***(2018) 16 SCC 228*** the Hon'ble Supreme Court held that an erroneous decision on a question of law which is illegal cannot operate as resjudicata.

> **5...***However, there are certain notable exceptions to the application of the doctrine. One well-known exception is that the doctrine cannot impart finality to an erroneous decision on the jurisdiction of a court.*

Likewise, an erroneous judgment on a question of law, which sanctions something that is illegal, also cannot be allowed to operate as res judicata.

31.4.The Hon'ble Supreme Court in the case of ***Nand Ram v. Jagdish Prasad,*** reported in ***(2020) 9 SCC 393*** has also reiterated the above principles.

33.3.The Hon'ble Two Judges Bench of the Supreme court in the case of ***Sajjadanashin Sayed Md. B.E. Edr. v. Musa Dadabhai Ummer***, reported in ***(2000) 3 SCC 350*** *has profounded the doctrine of the essentiality and necessity to consider the plea of resjudicata in the following terms:*

*18. In India, Mulla has referred to similar tests (Mulla, 15th Edn., p. 104). The learned author says : a matter in respect of which relief is claimed in an earlier suit can be said to be generally a matter "directly and substantially" in issue but it does not mean that if the matter is one in respect of which no relief is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was "directly and substantially" in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon the facts of the case. The question arises as to what is the test for deciding into which category a case falls? One test is that if the issue was "**necessary**" to be decided for adjudicating on the principal issue and was decided, it would have to be treated as "directly and substantially" in issue **and** if it is clear that the judgment was in fact **based** upon that decision, then it would be res judicata in a latter case (Mulla, p. 104). One has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue (Isher*

Singh v. Sarwan Singh [Isher Singh v. Sarwan Singh, AIR 1965 SC 948] and Syed Mohd. Salie Labbai v. Mohd. Hanifa [Syed Mohd. Salie Labbai v. Mohd. Hanifa, (1976) 4 SCC 780]). We are of the view that the above summary in Mulla is a correct statement of the law.

31.5. The said principle laid down in the above case followed by the Hon'ble Supreme Court in number of cases and also in the case of ***Nand Ram v. Jagdish Prasad,*** reported in ***(2020) 9 SCC 393*** has reiterated the said principle in the following manner:

> ***20.....*** *Which matters are directly in issue and which are only collaterally or incidentally in issue, must be determined on the facts of each case. A material test to be applied is whether the court considers the adjudication of the issue material and essential for its decision.*

31.6. In the case of ***Jamia Masjid v. K.V. Rudrappa, (2022) 9 SCC 225*** the Hon'ble three judges Bench of the Supreme Court affirmed the doctrine of "essentiality and necessity" profounded by the Hon'ble two judges Bench of the Supreme Court in the case of ***Sajjadanashin Sayed Md. B.E. Edr. v. Musa Dadabhai Ummer****,* reported in ***(2000) 3 SCC 350*** and has held as follows:

> ***48.*** *In view of the authorities cited above, the twin test that is used for the identification of whether an issue has been conclusively decided in the previous suit is:*
>
> *A. Whether the adjudication of the issue was "necessary" for deciding on the principle issue ("the necessity test"); and*
>
> *B. Whether the judgment in the suit is based upon the decision on that*

issue ("the essentiality test").

31.7. **In the case of *Pandurang Ramchandra Mandlik v. Shantibai Ramchandra Ghatge,* reported in *1989 Supp (2) SCC 627 at page 638 it has been held as follows:***

> ***16.****Section 11 bars the trial of a suit or issue in which the matter directly and substantially in issue has already been adjudicated upon in a previous suit. This section applies in terms to cases where the matter in issue in a subsequent "suit" was an issue in a "former suit". A "suit" is a proceeding which is commenced by a plaint. As provided in Section 26 of the CPC every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.*
>
> ***18.****It is true that Section 11 is now made applicable by the Explanations and interpretation to certain proceedings giving more extensive meaning to the word "suit". In its comprehensive sense the word "suit" is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law affords. The modes of proceedings may be various but that if a right is litigated between parties in a court of justice the proceeding by which the decision of the court is sought may be a suit. But if the proceeding is of a summary nature not falling within the definition of a suit, it may not be so treated for the purpose of Section 11.*
>
> ***20.****The expression "heard and finally decided" in Section 11 means a matter on which the court has exercised its judicial mind and has after argument and consideration come to a decision on a contested matter. It is essential that it should have been heard and finally decided. What operates as res judicata is the ratio of what is fundamental to the decision but it cannot be ramified or expanded by logical extension. In Vithal Yeshwant v. Shikandarkhan Makhtumkhan [AIR 1963 SC 385] it has been held by this Court that when a court bases its decision on*

more than one point, each of which would by itself be sufficient for the ultimate decision, the decision on each one of those points would be res judicata. In the instant case what were the points specifically urged and decided are not clear.

*32.*Upon a careful consideration of the above said judgments of the Hon'ble Supreme Court, this Court, for the purpose of determining the issue arising in the present case, deduces the following principles governing the applicability of doctrine of *res judicata*:

(i)even after the amendment introduced in the year 1976, though the expression "suit" occurring in Section 11 of the Code of Civil Procedure has been given an extensive meaning, every proceeding cannot automatically be treated as a suit for the purpose of applying the doctrine of *res judicata*.

(ii) it is the decision which operates as *res judicata* and not every reason recorded in support of that decision:

*(iii)*an erroneous reasoning on a pure question of law, which sanctions something that is illegal, also cannot be allowed to operate as *res judicata*.

*(iv)*a decision rendered in ignorance of a statutory provision or passed in total disregard of a binding precedent of the Hon'ble Supreme Court on a pure question of law does not operate as *res judicata*. Courts are not precluded from correcting such an error merely because the issue had been decided in earlier proceedings.

*(v)*for a finding to operate as res judicata, it must satisfy the tests of necessity

and essentiality; an incidental or collateral observation which was not necessary cannot operate as *res judicata*. An incidental or unnecessary finding cannot operate as *res judicata* when the decision on the principal issue itself does not depend upon such finding. This principle applies with greater force where the incidental finding is founded upon an erroneous appreciation of the law or a misconstruction of the relevant statutory provisions.

(vi)An erroneous decision on a pure question of law, unrelated to the rights of the parties and founded purely on an erroneous appreciation or determination of facts in the earlier proceedings, would not operate as *res judicata* in subsequent proceedings. Such a question can even be raised at the stage of execution, particularly where the decree sought to be executed is a nullity.

(vii) Constructive *res judicata* cannot be applicable to the cases where the incidental finding is founded upon an erroneous appreciation of the law or a misconstruction of the relevant statutory provisions.

33. This Court is not called upon to examine the validity of conclusion of the learned arbitrator and his decision to close claim petition of the plaintiff. The discussion in the present case is confined to ***the reasoning adopted by the arbitrator*** *in closing the arbitration proceedings on the ground that limitation could operate as resjudicata.* Moreover, the peculiar facts of the present case cannot be overlooked. The present suit had already been instituted before the competent

Civil Court much prior to the appointment of Arbitrator, filing of claim petition and conclusion of the arbitral proceedings. More importantly, the termination of arbitration proceeding by the learned Arbitrator contrary to the governing provisions of the Limitation Act, 1963, the Partnership Act, 1932, and the Arbitration and Conciliation Act, 2015, would constitute an error going to the very jurisdiction of the Arbitrator. Such a determination is not merely an erroneous appreciation of evidence or an error within jurisdiction; where the Arbitrator assumes or declines jurisdiction on an erroneous legal foundation, the resulting determination is susceptible to challenge as a jurisdictional error as held in AIR 1966 SC 153 particularly where the very assumption or exercise of jurisdiction is founded upon a legal provision which the Arbitrator had no authority to disregard. A jurisdictional error, going to the root of the authority of the adjudicatory forum, can, in an appropriate case, be questioned even in collateral proceedings. When the substantive reliefs claimed in the suit have not previously been adjudicated by a competent civil court, there is no justification for relying upon an incidental finding of the arbitrator to non-suit the plaintiff on the principle of res judicata. It is well settled that, even after the amendment introduced in the year 1976, though the expression "suit" occurring in Section 11 of the Code of Civil Procedure has been given an extensive meaning, every proceeding cannot automatically be treated as a suit for the purpose of applying the doctrine of res judicata. The Hon'ble Supreme

Court in ***Pandurang Ramchandra Mandlik v. Shantabai Ramchandra Ghatge***, reported in ***AIR 1989 SC 2240***, has clearly held that a proceeding of a summary nature, which does not fall within the meaning of the expression "suit", cannot be treated as a suit for the purpose of Section 11 of the Code. The expression "suit" in Section 11 refers to a proceeding instituted in a Court of first instance and is to be distinguished from other forms of proceedings. The said principle assumes greater significance in the present case, where the arbitrator did not adjudicate the substantive rights of the parties but merely recorded an incidental finding with regard to limitation and declined to proceed further on the ground that the dispute involved complicated questions requiring judicial adjudication.

34. Even that finding was rendered contrary to the statutory provisions and the settled principles governing the commencement of arbitration proceedings and dissolution of a partnership. Such an incidental reasoning, particularly when the arbitrator himself declined to adjudicate the substantive dispute on the ground that it required judicial determination, cannot operate as a bar to the present suit. Such an incidental or collateral finding, particularly when the substantive dispute itself was not adjudicated, cannot constitute a bar under Section 11 of the Code of Civil Procedure.

35. From the above reasoning of the arbitrator, in the peculiar facts and circumstances of the present case, it is clear that the learned Arbitrator has exercised jurisdiction in a manner contrary to the statutory scheme as discussed above, by treating the initiation and continuation of arbitration as barred by limitation without determining that the substantive claim itself was time-barred is erroneous.The arbitral proceedings culminated only in the year 2019. Therefore, on the face of the record, the claim for dissolution could not have been held to be barred by limitation. Such an approach amounts to conflating two distinct causes and two distinct periods of limitation as per section 21 of ***Arbitration and Conciliation Act,2015*** .Thus, the reasoning of the learned Arbitrator, insofar as it proceeds on the basis that the dispute had already started in the year 2015 and hence,continuation of arbitration was impossible and barred by limitation under article 137 of limitation act, is contrary to the statutory scheme contained in Section 21 of the Arbitration and Conciliation Act, the reference made by this Court under Section 11 of the said Act, Section 4, Article 137 of the Limitation Act, and Section 43 of the Partnership Act. and the same cannot be permitted to determine or foreclose the substantive rights which are yet to be adjudicated in the appropriate proceedings.

36.Further, in this case ,the nature of the order passed by the learned Arbitrator is also of considerable significance. An order terminating arbitral proceedings under Section 32(2)(c) cannot be treated as an arbitral award merely because the Arbitrator has assigned limitation as the reason for such termination. Upon considering the Judgement of the Hon'ble Supreme Court in 2025 INSC 1400 and other judgments it is clear that the statutory scheme of Section 32(2)(c) is materially distinct from the making of an arbitral award on the merits of the disputes referred to arbitration. Consequently, where the order under Section 32(2)(c) is not an arbitral award within the meaning of the Act, the remedy contemplated under Section 34 cannot mechanically be treated as the only means by which its legality can be examined. To insist upon a Section 34 proceeding against an order which, in law, is not an arbitral award would result in applying a statutory remedy to a proceeding which does not fall within its statutory field. This Court is conscious of the general principle that an arbitral award must ordinarily be challenged in accordance with the procedure prescribed under Section 34 of the Act and that the statutory scheme governing arbitral proceedings cannot ordinarily be circumvented. However, the present case stands on a different footing. There was no finding that the substantive claim of the claimant, relating to dissolution and rendition of accounts and partition of the partnership properties, was itself barred by limitation. Such termination therefore cannot be permitted to operate as an impediment to the adjudication of the substantive rights of the parties.

37. where an act or order is shown to suffer from a fundamental illegality or jurisdictional infirmity, the mere availing or non-availing the remedy before the appellate authority or other statutory remedy does not, in every circumstance, preclude the competent Court from examining the legality of such action, particularly where the very foundation upon which the order rests is found to be legally unsustainable.The principle enunciated by the Hon'ble Supreme Court in the three-Judge Bench decision reported in 1990 (1) SCC 193 wherein it has been held that an erroneous decision on a pure question of law, unrelated to the rights of the parties and founded purely on an erroneous appreciation or determination of facts in the earlier proceedings, would not operate as res judicata in subsequent proceedings and that such a question can even be raised at the stage of execution, particularly where the decree sought to be executed is a nullity, is applicable to the facts of this case. It is relevant to refer paragraph No.26 of the said judgment, which reads as follows:

> ***26.****Thus it is settled law that normally a decree passed by a court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned. A decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to*

the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non judice. ***A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings.*** *The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. If the court has jurisdiction but there is defect in its exercise which does not go to the root of its authority, such a defect like pecuniary or territorial could be waived by the party. They could be corrected by way of appropriate plea at its inception or in appellate or revisional forums, provided law permits. The doctrine of res judicata under Section 11 CPC is founded on public policy. An issue of fact or law or mixed question of fact and law, which are in issue in an earlier suit or might and ought to be raised between the same parties or persons claiming under them and was adjudicated or allowed uncontested becomes final and binds the parties or persons claiming under them. Thus the decision of a competent court over the matter in issue may operate as res judicata in subsequent suit or proceedings or in other proceedings between the same parties and those claiming under them. But the question relating to the interpretation of a statute touching the jurisdiction of a court unrelated to questions of fact or law or mixed questions does not operate as res judicata even between the parties or persons claiming under them. The reason is obvious; a pure question of law unrelated to facts which are the basis or foundation of a right, cannot be deemed to be a matter in issue. The principle of res judicata is a facet of procedure but not of substantive law. The* *decision on an issue of law founded on fact in issue would operate as res judicata. But when the law has since the earlier decision been altered by a competent authority or when the earlier decision declares a transaction to be valid despite prohibition by law it does not operate as res judicata. Thus a question of jurisdiction of a court or of a procedure or a pure question of law unrelated to the right of the parties founded purely on question of fact in the previous suit, is not res judicata in the subsequent suit. A question relating to jurisdiction of a court or interpretation of provisions of a statute cannot be deemed to have been finally determined by an erroneous decision of a court. Therefore, the doctrine of res judicata does not apply to a case of decree of nullity. If the court inherently lacks jurisdiction consent cannot confer jurisdiction. Where certain statutory rights in a welfare legislation are created, the doctrine of waiver also does not apply to a case of decree where the court inherently lacks jurisdiction.*

38.Applying the aforesaid principles to the facts of the present case, this Court is of the considered view that the failure to institute or pursue a proceeding under Section 34 *cannot operate as an absolute bar to the examination of the legality of the order passed under Section 32(2)(c)*, since the said order, properly construed, is not an arbitral award attracting the statutory challenge mechanism under Section 34

39. In the present suit, no question of the limitation was either raised or

arose. Suit for relief of partition of the partnership properties, rendition of account, dissolution of partnership firm as per Section 43 of Partnership Act, is within the period of limitation from the date of notice of the intention of dissolution of partnership firm i.e., on 03.03.2017 as per Article 137 of the Limitation Act. In view of the aforesaid circumstances, the finding of the learned Trial Judge that the issues had already been adjudicated in the arbitration proceedings and that the same operated as resjudicata to the present suit is not legally correct. The issue before the trial Court is whether, on the date of institution of the present suit, the reliefs sought therein were barred by limitation or otherwise did not arise since it had been filed with in period of limitation from the date of issuance of notice.Therefore, Such reasoning, in the considered view of this Court, is ex-facie illegal and cannot be treated as resjudicata

40. Accordingly, the finding of the arbitrator, insofar as it relates to limitation, cannot operate as res judicata against the plaintiff in the present suit. The trial Court was, therefore not justified in not considering the maintainability of the suit independently on the basis of the pleadings and the cause of action disclosed therein. The trial Court should not have treated the incidental finding of the arbitrator as conclusively determining the plaintiff's substantive rights.

41.Based upon the said arbitral termination order, the defendant filed an application under Order VII Rule 11 CPC before the learned Principal District

Judge, Theni, seeking rejection of the plaint on the ground that the learned Arbitrator had rejected the claim made by the plaintiff and the same was for all practical purpose become final and conclusive. It is stated in the petition for rejection of plaint, since the matter was already referred to the learned arbitrator and the arbitrator terminated the proceedings and there is nothing in the suit for adjudication and therefore, the Court has to strike out the plaint. The said application for rejection of the plaint was dismissed by the learned Principal District Judge vide order dated 11.02.2021. Aggrieved by the said order, the defendant approached this Court in C.R.P.(MD).No.1324 of 2021. This Court, after considering the rival submissions, including the effect of the finding recorded by the learned arbitrator, declined to accept the contention of the defendant and directed the learned trial Court to proceed with the suit and adjudicate upon the plaintiff's entitlement to the reliefs claimed therein. The operative portion of the order in C.R.P.(MD).No.1324 of 2021 dated 22.10.2021 reads as follows:

> *9.The respondent herein/plaintiff has filed counter in I.A.No.1 of 2020 and stated that already he has filed a suit in O.S.No.1 of 2016 on the file of the District Munsif Court, Periyakulam. As per the direction of this Court, she has filed a claim petition before the Arbitrator in C.P.No. 145 of 2019 the same was dismissed as barred by limitation. The respondent herein has filed Ar.O.P.No.32 of 2020 and the petition is still pending.*
>
> *10. But, now partnership deed is not in existence. As per Clause 14 of the agreement, she sent a notice to the petitioner and dissolved the partnership. Therefore, the suit is maintainable. Further, the Arbitrator also stated in his findings that judicial trial is necessary for the dispute.*

11. There is no doubt, even though a partnership dissolved the agreement for arbitration is still exists. The Section 8(1) of Arbitration Act, is extracted hereunder:

"***Power to refer parties to arbitration where there is an arbitration agreement**.-*

(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreements exists. "

12. The revision petitioner/defendant has filed written statement on 11.12.2017. The revision petitioner has not filed any petition to invoke Section 8 of Arbitration Act before filing written statement.

The revision petitioner/defendant has filed the petition in I.A.No.1 of 2020 in O.S.No.21 of 2017, under Order 7 Rule 11 of Civil Procedure Code to reject the plaint. The revision petitioner can file rejection of plaint only on the ground stated under Order 7 Rule 11 of Civil Procedure Code.

16. As per his contention already the respondent/plaintiff approached Arbitration as per arbitration clause in the partnership deed. Therefore, the respondent/plaintiff can seek remedy only before the Arbitration.

19. Further, the Arbitrator himself observed that judicial trial is necessary to solve the dispute between the parties.

20. In W.P.(MD)No.6791 of 2020, this Court has also observed that the civil suit in O.S.No.21 of 2017 pending on the file of the Principal District Court, Theni to be disposed within three months and it was also observed that the dispute will be resolved after the disposal of civil suit.

16. The learned Principal District Judge, Theni has dismissed the I.A.No.1 of 2020 in O.S.No.21 of 2017, on the following grounds:

32. From the foregoing it is clear that the claim before the Learned Arbitrator is not disposed of on merits. Further even in the order dated 20.03.2020 passed in the claim petition by the Learned Arbitrator the

Learned Arbitrator has opined that "...but at the same time to arrive and to decide that whether the claimant invested capital or contributed landed properties into the business of the firm and whether the claimant is having any rights over the properties of the firm or not a judicial trial is essentially required.

22. The revision petitioner has also gave a police complaint against the respondent for trespass. The main question is that whether the respondent has also invested for the firm and the respondent is also entitled for ½ share. The issue can be decided only by the Civil Court.

23. The learned Principal District Judge, Theni, has rightly dismissed the I.A.No.1 of 2020 in O.S.No.21 of 2017. This Court has no valid reason to interfere with the order passed by the Court below.

24. Finally, this Civil Revision Petition is dismissed by confirming the order, dated 11.02.2021 passed by the learned Principal District Judge, Theni, in I.A.No.1 of 2020 in O.S.No.21 of 2017. No Costs. Consequently, connected miscellaneous petition is closed.

41.1.The said order was thereafter challenged by the defendant before the Hon'ble Supreme Court by way of filing a Special Leave Petition in S.L.P.(c).No. 21063 of 2021 and the Hon'ble Supreme Court also confirmed the same on 25.04.2022 by passing the following order:

Heard the learned counsel for the petitioner.

In exercising of our jurisdiction under Article 136 of the Constitution, we do not find any ground to interfere with the order passed by the High Court. The special Leave Petition is, accordingly, *dismissed.*

41.2.Subsequently, for similar relief another I.A., has been filed to strike out the plaint. The same was also dismissed. The above said facts are admitted by D.W. 1 and the relevant portion of evidence of D.W.1 is as follows:

> இந்த பிராதை நிராகரிக்க வேண்டும் என I.A.1.2020 மனுவை தாக்கல் செய்தேன் என்றால் சரிதான். அந்த 11.02.2021 அன்று தள்ளுபடி செய்யப்பட்டது என்றால் சரிதான். அந்த உத்தரவை எதிர்த்து உயர்நீதிமன்றத்தில் ஒரு சீராய்வு மனு 1324/2021 தாக்கல் செய்து அது கடந்த 11.02.2021 அன்று தள்ளுபடி செய்யப்பட்டது என்றால் சரிதான். தற்போது என்னிடம் காட்டப்படும் உத்தரவு நகல் அது தான். அந்த சீராய்வு மனு 1324/2021, 22.10.2021-ம் தேதியிட்ட உத்தரவு நகல் வா.சா.ஆ.22 ஆக குறியீடு செய்யப்படுகிறது. அந்த உத்தரவின் பேரில் உச்சநீதிமன்றத்தில் Special Leave Petition 21063.2021 மனு தாக்கல் செய்து 25.04.2022 அன்று தள்ளுபடி செய்யப்பட்டது என்றால் சரிதான். இங்கு காட்டப்படும் உத்தரவு நகல் அது என்றால் சரிதான். அந்த உத்தரவு நகல் வா.சா.ஆ.-23 ஆக குறியீடு செய்யப்படுகிறது. உச்சநீதிமன்றம் வரை சென்று நான் போட்ட மனு தள்ளுபடி செய்யப்பட்ட பின்பும் அந்த உத்தரவை மறைத்து, மறுபடியும் பிராதை நிராகரிக்க கோரி நான் தாக்கல் செய்ய கோரிய மனு கோப்பிற்கு எடுக்காமல் திருப்பப்பட்டது என்றால் ஞாபகமில்லை. கோப்பிற்கு எடுக்காமல் திருப்பப்பட்டதை எதிர்த்து உயர்நீதிமன்றத்தில் CRP.(MD).No,513/2022 தாக்கல் செய்தேன் என்றால் வழக்கறிஞரைக் கேட்டால் தான் தெரியும். இங்கு காட்டப்படும் CRP.No.513.2022 உத்தரவு நகலில் என் மனு தள்ளுபடி செய்யப்பட்டு எனக்கு ரூ.10,000/- அபராதம் விதிக்கப்பட்டது என்றால் சரிதான்.

42.The said order of this Court was thereafter challenged before the Hon'ble Supreme Court in the SLP proceedings. After issuing notice both parties were heard and the Hon'ble Supreme Court did not interfere with the order passed by this Court. It is a well-settled principle of law that, once an issue has attained finality between the parties and the said determination has been confirmed by the competent courts, the same issue cannot be repeatedly re-agitated in subsequent stage of the same proceedings arising out of the same cause of action in view of the principles of res judicata, finality of adjudication and estoppel by record. Once such an issue has attained finality, the same parties cannot be permitted to re -agitate the very same issue at a subsequent stage of the proceedings. This principle has been recognised by the Hon'ble Supreme Court in Satyadhyan Ghosal v. Deorajin Debi, AIR 1960 SC 941, subsequently reiterated in***Y.B. Patil v. Y.L. Patil*, (1976) 4 SCC 66 and *Ishwar Dutt v. Collector (LA)*, (2005) 7 SCC 190 etc**

Satyadhyan Ghosal v. Deorajin Debi, AIR 1960 SC 941	Y.B. Patil v. Y.L. Patil, (1976) 4 SCC 66	Ishwar Dutt v. Collector (LA), (2005) 7 SCC 190
8. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings...	4. It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceedings	14.. ....The principle of res judicata, as is well known, would apply in different proceedings arising out of the same cause of action but would also apply in different stages of the same proceedings. As the judgment and order passed in CWP No. 510 of 1985 [CWP No. 510 of 1985 dated 9-9-1985] attained finality, we are of the opinion that the respondents herein could not have raised any contention contrary thereto or inconsistent therewith in any subsequent proceedings........

43.The above principles squarely apply to the facts of the present case. The finding recorded by the arbitrator on limitation could not have been treated as conclusive adjudication so as to terminate the present suit. This Court, after considering the attendant circumstances, confirmed the dismissal of the application seeking rejection of the plaint. Thus, civil suit is always maintainable. Accordingly, the finding of the learned trial Judge that the plaintiff's claims for dissolution of partnership, rendition of accounts and consequential injunction are barred solely on the basis of the arbitrator's earlier observation regarding limitation is legally unsustainable. The said finding is contrary to the earlier orders passed by the learned trial Court and this Court in C.R.P. No.1324 of 2021 confirmed in SLP (CIVIL)

S.L.P.(c).No.21063 of 2021 dated on 25.04.2022, which had already directed that the suit should proceed to trial on the plaintiff's entitlement to the reliefs claimed. The impugned finding, therefore, cannot be sustained and the same amounts to re-agitation of the very same issue and it would not be permissible.

44.Discussion on Order II Rule 2 CPC:

44.1.To test the finding of the learned trial Judge under Order II Rule 2 CPC on the basis of the arbitration award , it is relevant to refer the principles laid down by the Privy Council in the case of *Mohd. Khalil Khan v. Mahbub Ali Mian* (Privy Council), the Hon'ble Supreme Court *Gurbux Singh v. Bhooralal* (CB) and the subsequent decisions Hon'ble Supreme Court, Hon'ble five members judges of full bench judgment of the Allahabad High Court reported in **AIR 1977 All 211 (FB).**

44.2. In the case of Mohd. Khalil Khan v. Mahbub Ali Mian reported in AIR 1949 PC 78, the Privy Council summarized the following principles to test the cases falling under Order II Rule 2 of C.P.C., which reads as follows:

> *44.2.1.*The principles laid down in the cases thus far discussed may be thus summarized :
> *(1.) the correct test in cases falling under Or. 2, r. 2, is "whether the claim in the new suit is, in* fact, founded on a cause of action distinct from that which was the foundation for the former suit." (*Moonshee Buzloor Ruheem* v. *Shumsoonnissa Begum*50.)
> *(2.) The cause of action means every fact which will be necessary for the*

plaintiff to prove, if traversed, in order to support his right to the judgment. (Read v. *Brown*51.)

(3.) If the evidence to support the two claims is different, then the causes of action are also different. (Brunsden v. *Humphrey*52.)

(4.) The causes of action in the two suits may be considered to be the same if in substance they are identical. (Brunsden v. *Humphrey*53.)

(5.) The cause of action has no relation whatever to the defence that may be set up by the defendant, nor does it depend on the character of the relief prayed for by the plaintiff. It refers "to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour." (Muss. Chand Kour v. *Partab Singh*54.) This observation was made by Lord Watson in a case under s. 43 of the Act of 1882 (corresponding to Or. 2, r. 2), where plaintiff made various claims in the same suit.

44.3.The Hon'ble Constitution Bench of the Supreme Court in the case of Gurbux Singh v. Bhooralal reported in AIR 1964 SC 1810 has laid the essential Principles to hold the subsequent suit is bared under Order II Rule 2 of C.P.C., which reads as follows:

6. *In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil* ***Procedure Code should succeed the defendant who raises the plea must*** *make out; (i) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the* *second suit had been filed.*

***44.4.In the case of Sardar Balbir Singh v. Atma Ram Srivastava,*(5 judges Full bench AIR 1977 All 211 it was held as follows:**

> *63.... There is, however, a distinction between 'cause of action' and the 'right of action'. These terms are not synonymous and interchangeable. A right of action is a right to presently enforce a cause of action a remedial right affording redress for the infringement of a legal right belonging to some definite person; a cause of action is the operative facts which give rise to such right of action. The right of action does not arise until the performance of all conditions precedent to the action, and may be taken away by the running of the statute of limitations through an estoppel, or by other circumstances which do not affect the cause of action. There may be several right of action and one cause of action and rights may accrue at different times from the same cause.*

44.5.Upon a careful consideration of the foregoing principles, and for the purpose of determining the issue arising in the present case, this Court deduces that the following conditions must coexist for the bar under Order II Rule 2 of the Code of Civil Procedure to operate:

(1)The correct test in cases falling under Order 2, Rule 2 is "whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation for the former suit".

(2)The cause of action means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment.

(3)If the evidence to support the two claims is different, then the causes of action also are different.

(4) The cause of action in the two suits may be considered to be the same if in substance they are identical.

(5)The cause of action has no relation whatsoever to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

(6) the relief claimed in the subsequent proceeding must have been available to the plaintiff on the date of institution of the earlier proceeding but was omitted and the leave of the Court was not obtained.

(7)One of the tests is whether the claim in the subsequent suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit. If the answer is in the affirmative, the bar does not apply.

44.6.Applying the above principles to the facts of the present case, this Court finds that the earlier suit was instituted solely for a decree of permanent injunction restraining the other partner from alienating the partnership properties in violation of the terms of the partnership and to prevent fraudulent alienation thereof. The cause of action for that suit was confined to the threatened alienation of the partnership assets. Similarly, the arbitration claim was confined to the reliefs relating to dissolution of the partnership and recovery of the amounts claimed by the claimant. The plaint in the present suit specifically states that, despite the pendency of the earlier proceedings, the defendant continued to alienate the partnership properties. Consequently, while excluding the properties already sold, the plaintiff sought dissolution of the partnership and division of the remaining partnership assets. Thus, the causes of action in the two suits are entirely distinct. The earlier suit was founded upon the threatened alienation of the partnership properties, whereas the present suit arose only after the issuance of the notice dissolving the partnership and the consequent breakdown of the relationship between the partners. It is a well-settled principle of law that dismissal or pendency of a suit for bare injunction does not preclude the institution of a subsequent suit founded upon a different and subsequent cause of action seeking declaration, dissolution or other substantive reliefs. Consequently, neither Section 11 of the Code of Civil Procedure nor Order II Rule 2 CPC is attracted to the facts of the present case.

45.Order II Rule 2 CPC can be invoked only when the subsequent suit is founded upon the very same cause of action as stated in the earlier suit and the plaintiff had omitted to claim a relief which had already accrued on the date of institution of the earlier suit. Since the cause of action for dissolution of the partnership arose only upon issuance of the dissolution notice dated 03.03.2017, long after the institution of O.S.No.1 of 2016, the plaintiff cannot be non-suited under Order II Rule 2 CPC. Subsequently, after the present suit had already been instituted, this Court allowed C.R.P.(MD).No.49 of 2017 and directed the parties to pursue the remedy of arbitration in terms of the arbitration clause. Pursuant thereto, the earlier injunction suit came to be closed. Thereafter, the defendant himself initiated proceedings under Section 11 of the Arbitration and Conciliation Act, 1996, before this Court seeking appointment of an Arbitrator. Upon appointment of the learned Arbitrator, the plaintiff also presented her claims before the Arbitrator seeking dissolution of the partnership and other consequential reliefs. During the pendency of the arbitral proceedings, however, the present commercial suit was already pending before the competent Civil Court. The learned Arbitrator, while recording a categorical finding that the disputes involved complicated questions of fact and law requiring Judicial Trial, nevertheless proceeded to terminate the Arbitral proceeding holding that the claim for dissolution of the partnership was barred by limitation.

46.The present proceedings, on the other hand, seek comprehensive reliefs, namely, a declaration that the partnership stands dissolved, rendition of accounts, *partition* and allotment of the plaintiff's half share in the partnership properties, recovery of the amounts due to her, and a consequential permanent injunction restraining alienation of the suit properties.

47.The reliefs claimed in the present suit and the reliefs claimed in the earlier are not one and the same.

48. The cause of action for that suit was confined to the threatened alienation of the partnership assets. Similarly, the arbitration claim was confined to the reliefs relating to dissolution of the partnership and recovery of the amounts claimed by the claimant.

49.The present proceedings, on the other hand, seek comprehensive reliefs, namely, a declaration that the partnership stands dissolved, rendition of accounts, partition and allotment of the plaintiff's half share in the partnership properties, recovery of the amounts due to her, and a consequential permanent injunction restraining alienation of the suit properties. Thus, the cause of action for the earlier suit, the arbitration proceedings, and reliefs in the the present suit are distinct and founded on different factual and legal basis.

50.Consequently, the essential constituents for invoking the bar under Order

II Rule 2 CPC are conspicuously absent. Equally, the finding of the learned Trial Judge that the suit is barred by the principles of *res judicata* is unsustainable, as the issues directly and substantially in issue in the present proceedings were neither finally adjudicated nor decided in the earlier proceedings.

51.The learned Trial Judge failed to examine the true scope and applicability of Order II Rule 2 CPC and the doctrine of *res judicata* in the light of the settled principles governing their application. The impugned finding, therefore, suffers from a clear error of law and cannot be sustained. Accordingly, the said finding is set aside.

52.Discussion on the framing of issues:

52.1.In the suit filed before the learned Principal District Court, Theni, seeking dissolution of the partnership and other consequential reliefs, namely, **O.S.No.21 of 2017**, (subsequently renumbered as **C.S.No.1 of 2024**,) the suit was instituted with the reliefs for partition and dissolution of the partnership within the period of limitation on 24.04.2017 from the issuance of Notice of dissolution on 03.03.2017.

53.There was no issue framed in the present suit with regard to whether the claim forming the subject matter of the suit was barred by limitation. In this aspect,it is relevant to extract Issues framed by the learned Trial Judge in paragraph Nos.4 and 5 of impugned judgment:

1.Whether the plaintiffs are entitled for declaration as prayed for?

2.Whether the plaintiffs are entitled for remedy for rendition of accounts?

3.Whether the plaintiffs are entitled for the relief sought for in the plaint?

4.What are the relief the plaintiffs are entitled to?

5.Though the matter was posted for framing of additional issues on the memo filed by the defendant counsel, no additional issues were framed by the Court.

53.1.From a reading of paragraphs 4 and 5, there is no indication that any issue was framed with regard to **res judicata** or the bar under **Order II Rule 2 CPC**. Therefore, without framing the necessary issues, the learned Trial Judge proceeded to hold that the suit was barred under Order II Rule 2 CPC and by the principles of res judicata. In the considered opinion of this Court, such a finding cannot be legally sustained.

54.Issues are the back bone of the suit. The framing of issues, therefore, has a very important bearing on the trial and decision of a case. Firstly, it is the issues framed and not the pleadings that guide the parties in the matter of leading evidence.

55.Res judicata, bar under Order II Rule 2 of C.P.C., are all issues of law and depends upon facts to be investigated. More particularly, the question of the said issue already held against the defendants in his application filed under Order VII Rule 11 to strike out the plaint on the said grounds. Hence, the learned trial Judge ought to have framed the issues. In the absence of any such issue, the learned Trial Judge ought not to have relied upon the findings in the arbitration proceedings to conclude that the plaintiff's claim was barred by limitation. Therefore, the approach adopted by the learned Trial Judge in treating the termination of the arbitration proceedings as a bar to the adjudication of the issues arising for consideration in the present suit is not legally sustainable.

56.**Conclusive finding**:

56.1.The records disclose a prolonged journey of litigation in which the appellant, an elderly lady aged about 70 years, has been compelled to pursue multiple proceedings to safeguard her lawful rights in the partnership. Having invested substantial funds in the partnership firm, she legitimately expected that her share in the partnership assets would be duly protected. However, the respondent, instead of safeguarding the partnership assets, proceeded to alienate them to the prejudice of the appellant's interest. Apprehending further alienation, the appellant initially instituted a suit for permanent injunction restraining the respondent from alienating the partnership properties. The respondent, however, questioned the maintainability of the suit by invoking the arbitration clause and filed an application under Section 8 of the Arbitration and Conciliation Act, 1996. Though the said application was dismissed by the Trial Court, the respondent preferred a Civil Revision Petition before this Court. During the pendency of the revision proceedings, the respondent continued to alienate the partnership properties while simultaneously disputing the appellant's contribution to the partnership and contending that the properties had been acquired exclusively from his own funds and did not constitute partnership assets, notwithstanding the documentary evidence produced by the appellant. Faced with the continuing alienations and the necessity of securing comprehensive reliefs, the appellant instituted the present suit seeking dissolution of the partnership, rendition of accounts, partition of her share in the partnership properties, recovery of the amounts due, and a consequential injunction restraining further alienation of the remaining properties. Subsequently, the Civil Revision Petition was allowed, and the parties were directed to resolve their disputes through arbitration. Thereafter, at the instance of the respondent, an Arbitrator was appointed under Section 11 of the Arbitration and Conciliation Act by this Court. The records further disclose that the respondent simultaneously sought rejection of the present suit plaint under Order VII Rule 11 CPC and she was unable to continue the present suit proceeding. Therefore, in view of the appointment of arbitrator, the appellant had to face parallel proceedings by presenting her claim before the learned Arbitrator without any other practical alternative to arrest the continuous mischief of alienation of properties of partnership. The learned Arbitrator, while observing that the disputes involved mixed questions of fact and law, ultimately dismissed the claim by holding that it was barred by limitation. Thereafter, the arbitral award was placed before the Trial Court in the present suit. The learned Trial Judge, placing reliance upon the arbitral award, dismissed the suit by holding that it was barred by limitation, Order II Rule 2 CPC, and the principles of *res judicata*.

56.2. The chronology of events unmistakably demonstrates that appellant cannot be blamed for multiplicity of proceedings. Each proceeding was necessitated by the respondent's deliberate selling of the partnership properties, his challenge to the maintainability of the civil proceedings on the strength of the arbitration clause, and the procedural directions issued by the Courts. The appellant cannot, therefore, be penalised for diligently pursuing the following remedies that the procedural developments compelled her to adopt:

Prayer in O.S.No.21 of 2017 on the file of the Principal District and Sessions Court, Theni	O.S.No.1 of 2016	Prayer in claim petition No.145 of 2019
a)For declaration that the partnership deed of nPRV properties was dissolved in pursuance of notice dated 03.03.2017 sent by the plaintiff to the defendant with effect effect from the date of receipt of the notice on 04.03.2017. b)For directing the defendant to render the true and proper accounts in respect of the said partnership deed in respect of all transaction including sale and purchase of properties. c)To pass a preliminary decree for partition in respect of the allotment of half share of the plaint schedule properties after deleting the properties sold by the defendant. d)To pass decree for permanent injunction restraining the defendant from any way alienating and encumbering the plaint schedule properties by suppressing the dissolution of partnership deed or by claiming the plaint schedule properties as his absolute properties. e)To direct the defendants to pay the cost of the suit to the plaintiff. f)To pass any other relief for the stage and circumstances of the case as deemed fit and thus render justice.	அ) பிராது சொத்துக்களில் போடப்பட்டுள்ள மனையிடங்களை பிரதிவாதி நேரடியாகவோ பவர் ஏஜென்டுகள் மூலமாகவோ மொத்தமாகவோ தனித்தனியாகவோ ஒத்தி ஈடு கிரையம் போன்ற எவ்வித வில்லங்கங்களும் ஏற்படுத்தாமல் இருக்க பிரதிவாதிக்கு எதிராக நிரந்தர நிலையுத்துக் கட்டளை பரிகாரம் வழங்கியும்.	Therefore, it is most humbly prayed that this Hon'ble Tribunal may be pleased a) to declare that the partnership firm namely PRV properties is dissolved with effect from 03.03.2017 being the date on which the Notice of Dissolution was issued by the Claimant in accordance with law. b.Order winding up of the partnership firm PRV properties in accordance with law. c.To pass order appointing receiver to do all the acts and deeds completely effectively, legally to windup the business of the firm PRV Properties in accordance with law. d.To settle the accounts of the firm between the claimant and respondent and to give a credit of a sum of Rs.6,99,86,000/- to the claimant being the amount contributed by the claimant to the partnership firm and also to give credit to the entire sale consideration received by the respondent towards sale of plots including the sum of Rs.1,01,57,156/- while settling the accounts of the firm. e.To direct the respondent to pay the cost of the arbitral proceedings and f.To pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice.

56.3.This Court is also conscious of the fact that the appellant, despite possessing a substantial and prima facie legitimate claim over the partnership assets, has been compelled to face the protracted litigation for several years without enjoying the fruits of her investment. None of the prayer was granted at any stage of the proceedings. Firstly, the injunction suit was filed and she was asked to file an

Arbitration claim and the same was dismissed as barred by limitation even after observing that all the disputes are to be adjudicated only in Judicial Trial. This is contrary to the settled legal position. Subsequently, the present suit was also dismissed stating that the arbitrator dismissed the claim as barred by limitation. In view of the factual circumstances, it is clear that none of the proceedings initiated by the plaintiff, an uneducated lady, resulted in an adjudication on the merits of her claim. At the same time, the defendant had defiantly sold away more than 40% of the properties belonging to the partnership firm. In the said circumstances, this Court is inclined to entertain the appeal suit and decide the same on merits. This is not a case to be viewed through the prism of procedural technicalities alone. More particularly, the plaintiff is an illiterate woman even as per the evidence of the defendant, which reads as follows:

> *வாதி படிக்காத கையெழுத்து மட்டும் போடக்கூடிய நபர் என்றால் சரிதான். ஆதனால் தான் நான் வாதியை பல்வேறு வழிகளில் மோசடி செய்து ஏமாற்றியுள்ளேன் என்றால் சரியல்ல.*

56.4.Having regard to the totality of the circumstances, this Court is satisfied that this is an exceptional case warranting the exercise of its equitable and supervisory jurisdiction to prevent a manifest failure of justice and the application of principle of “justice, equity and good conscience" as propounded by the Hon'ble

Constitution Bench of the supreme court in the case of ***Muralilal vs. Dev Karan*** reported in ***AIR 1965 SC 225*** followed by the other Constitution Bench of the Supreme Court in the case of ***M.Siddiq vs. Suresh Das*** reported in ***2020 (1) SCC 1*** and the relevant paragraph is as follows:

> *1022.... Where the existing statutory framework is inadequate for courts to adjudicate upon the dispute before them, or no settled judicial doctrine or custom can be availed of, courts may legitimately take recourse to the principles of justice, equity and good conscience to effectively and fairly dispose of the case. A court cannot abdicate its responsibility to decide a dispute over legal rights merely because the facts of a case do not readily submit themselves to the application of the letter of the existing law. Courts in India have long availed of the principles of justice, good conscience and equity to supplement the incompleteness or inapplicability of the letter of the law with the ground realities of legal disputes to do justice between the parties. Equity, as an essential component of justice, formed the final step in the just adjudication of disputes. After taking recourse to legal principles from varied legal systems, scholarly written work on the subject, and the experience of the Bar and Bench, if no decisive or just outcome could be reached, a Judge may apply the principles of equity between the parties to ensure that justice is done. This has often found form in the power of the court to craft reliefs that are both legally sustainable and just.*

56.5.Behind the labyrinth of legal proceedings, the inadequacy of timely legal advice, the delays attending the hearing of interlocutory applications, and the successive alienation of the suit properties by the defendant, stands a seventy-year-old woman, still knocking at the doors of justice for the vindication of what she asserts to be her legitimate rights. This Court is also conscious of the fact that the appellant, despite possessing a substantial and prima facie legitimate claim over the partnership assets, has been compelled to face a protracted litigation for several years without enjoying the fruits of her investment. The cumulative weight of these procedural vicissitudes and the continuing litigation has prolonged her struggle far beyond what justice should ordinarily demand.

56.6.The Court must also bear in mind the fundamental object of the judicial process. A litigant approaches a Court seeking adjudication and redressal of a legally cognizable grievance. Where a proceeding is terminated on a legally erroneous premise, without adjudicating the actual controversy between the parties, merely directing the litigant to pursue a remedy which is not statutorily applicable to the impugned order would not advance the cause of justice. This Court aptly extracts the following living thoughts of the Hon'ble ***Mr.Justice.Krishna Iyer***, to redress the further grievance of the appellant:

"Litigants are legal patients suffering from injustices seeking healing

for their wounds".

56.7.Accordingly, the judicial process is intended not merely to identify the existence of a wound but also to provide the legally permissible remedy for its redressal. The order of termination, therefore, cannot be permitted to defeat the claimant's substantive rights on such an erroneous premise.

56.8.This Court must, therefore, bear in mind the human dimension of the litigation and ensure that procedural law does not become an instrument by which substantive justice is postponed, diluted, or ultimately denied. Courts exist to render substantive justice, and procedural complexities cannot be permitted to defeat lawful rights. Therefore,to deny relief on technical grounds would amount to perpetuating the injustice already suffered by the appellant.

56.9. In the light of the foregoing discussion, this Court is of the considered opinion that the learned Principal District Judge, Theni, committed a manifest error in dismissing the suit on the grounds of limitation, *res judicata*, Order II Rule 2 CPC, insufficiency of court fee and lack of proof regarding the existence of partnership assets. Accordingly, the findings recorded by the trial Court on all the above issues are unsustainable in law and on facts. Consequently, this Court holds that the finding recorded by the learned Arbitrator that the claim for dissolution of the partnership was barred by limitation is manifestly erroneous and cannot be relied upon for applying the principles of *res judicata* or Order II Rule 2 CPC.

56.10. Despite the various interim injunction orders granted by the learned Trial Court from time to time, the defendant, in total disregard of and in disobedience to those orders, proceeded to alienate several items of the suit properties. Such alienations were made not only prior to the institution of the suits in O.S. Nos. 1 of 2016 and 1 of 2017, but also subsequent to the institution of the suits and even during the pendency of the arbitration proceedings. The repeated alienations, notwithstanding the subsisting orders of injunction, cannot prejudice the plaintiff's substantive right to seek partition. Accordingly, the plaintiff is entitled to seek partition and separate possession of the half share in the properties that remain available and mentioned in the suit schedule .

57.Accordingly, Point No.(i) is answered in favour of the appellant by holding that the suit is neither barred under Order II Rule 2 CPC nor by the principles of *res judicata*. Point No.(ii) is also answered in favour of the appellant by holding that the suit properties are partnership properties and that the plaintiff is entitled to seek dissolution, rendition of accounts and settlement of the partnership assets. Point No.(iii) is likewise answered in favour of the appellant by holding that the court fee paid by the plaintiff is proper and the suit is maintainable. Accordingly, all the findings recorded by the learned trial Judge are liable to be reversed.

58.The materials on record disclose that the appellant has been compelled to undergo multiple rounds of litigation and has been unjustly deprived of her legitimate share in the partnership properties. The conduct of the respondents has resulted in prolonged and avoidable litigation. Taking into consideration the entire circumstances of the case, this Court deems it appropriate to award costs.

59.Accordingly, the Commercial Appeal is allowed with costs. The judgment and decree dated 09.12.2024 passed in C.O.S.No.1 of 2024 on the file of the learned Principal District Judge, Theni, are hereby set aside and the suit in C.O.S.No.1 of 2024 on the file of the learned Principal District Judge, Theni, stands decreed as prayed for. Consequently, the connected miscellaneous petition is closed.

[N.A.V, J.] & [K.K.R.K,J.]
18.09.2026

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
sbn

To

1.The Principal District Judge,
Theni.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

N.ANAND VENKATESH, J.

and

K.K.RAMAKRISHNAN, J.

sbn

PRE-DELIVERY JUDGMENT made in

Appeal (CAD) (MD).No.3 of 2025

Dated: 18.09.2026.