IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Aryak Dutt

AO-COM/38/2026

SANDIP SINGLA
VS
JAGDEB CHAND GUPTA

For the Appellants : Mr. Anjan Ray, Advocate
Mr. Subhajit Choudhury, Advocate
Ms. Swagatalaxmi Nalui, Advocate

For the Respondent : Mr. Swatarup Banerjee, Advocate
Mr. Ratul Biswas, Advocate
Mr. Kaushik Chowdhury, Advocate
Mr. Durlav De, Advocate
Ms. Bipasha Bhattacharyya, Advocate

Heard & Judgment on: August 20, 2026

Debangsu Basak, J.

1. Appeal is under Section 37 of the Arbitration and Conciliation Act, 1996 and directed against order dated June 30, 2018 passed in Misc. Case No. 139 of 2015.
2. By the impugned judgment and order, learned Trial Judge dismissed a petition of challenge under Section 34 of the Act of 1996 directed against the award dated December 4, 2015.
3. Learned advocate appearing for the appellant submits that, the appellant and the respondent are partners in a partnership firm. He refers to the partnership agreement dated February 5, 2004. He submits that, the parties were referred to arbitration.

4. Learned advocate appearing for the appellant submits that, in the arbitration proceeding, a purported Memorandum of understanding was sought to be entered into. He submits that, the appellant was coerced into entering into the Memorandum of Understanding. In any event, according to him, the Memorandum of Understanding was obtained by undue influence being exercised upon the appellant. According to him, the Memorandum of Understanding is not binding on the appellant.
5. Learned advocate appearing for the appellant draws the attention of the Court to the award dated December 4, 2015. He submits that, the learned Arbitrator travelled beyond the reference. He submits that, the learned Arbitrator rearranged the business of the partnership in a manner where, the partnership business ceased to exist. He refers to the prayers made in the Statement of Claims. He submits that, no prayer for dissolution of the partnership business was made by the respondent as the claimant.
6. Learned advocate appearing for the respondent submits that, a Memorandum of Understanding was entered into between the parties during the arbitration. He refers to the award dated December 4, 2015. He submits that, the award is in terms of the Memorandum of Understanding between the parties.
7. Learned advocate appearing for the respondent refers to Section 69 of the Indian Partnership Act, 1932. He submits that, since the respondent did not apply for dissolution of the partnership firm, no arbitration can take place, in view of the provisions of Section 69 of the Act of 1932.
8. Learned advocate appearing for the respondent submits that, the arbitral Tribunal did not reconstitute the business or change the nature of the partnership firm. He refers to the award in detail.

9. Parties before us entered into a partnership deed dated February 5, 2004. Apparently, disputes and differences arose between the parties to such partnership deed. Disputes and differences between the partners were referred to arbitration.

10. During the pendency of the arbitration, a Memorandum of Understanding was entered into. The claim of the appellant is that, such Memorandum of Understanding was obtained by undue influence and coercion. The claim of the respondent is otherwise.

11. Memorandum of Understanding dated November 3, 2014 requires the parties to approach the Petroleum Company to sign the dealership agreement. It notes that such dealership agreement expired on October 27, 2014. Memorandum of Understanding puts in certain measures to be taken with regard to a go-down taken on rent and payment to a third party.

12. Learned Arbitrator proceeded to pass an award dated December 4, 2015. In the award, learned Arbitrator directed that, one of the partners would be continuing the business for a particular period of time and would be paying the other partner a specified monthly sum. Thereafter, on conclusion of the first period, the other partner would take over the partnership business for a specified period of time and equally pay the specified monthly sum to the other partner. This arrangement will continue in notation.

13. In the Statement of Claim, the respondent, did not pray for dissolution of the partnership business. Respondent as the claimant, sought relief with regard to allowing such claimant to participate in the business of the firm. Direction was also sought upon the appellant to pay the share of profit of the respondent for a period from April 2010 and for an award for accounts.

14. Learned Arbitrator did not grant any of the three prayers made in the Statement of Claims. Accounts were not directed to be furnished. Learned Arbitrator proceeded to distribute the management of the partnership amongst two partners.

15. Justification of the learned Arbitrator in so doing is the so-called Memorandum of Understanding. The Memorandum of Understanding, however, in our view, does not contemplate that, the management of the business of the firm would be vested on one of the partners to the exclusion of the others over an infinite period of time. Moreover, in our view, the award does not speak on the sharing of losses that the partnership firm may suffer in any given period of time.

16. In our reading of Section 69 of the Act, 1932, the same does not prevent an unregistered partnership firm from applying for dissolution of such firm, in a Civil Court, in the event there is no arbitration agreement.

17. According to the respondent, an arbitration is maintainable between two partners of a partnership firm only if dissolution of a firm is prayed for. According to the respondent no other prayer can be made in an arbitration proceeding between two partners in view of the provisions of Section 69 of the Act of 1932.

18. In our view, Section 69 of the Act of 1932, regulates the filing of suits by an unregistered partnership firm. It does not speak on the issue as sought to be contended on behalf of the respondent before us. One of the contentions of the respondent is that, since, the respondent did not pray for dissolution of the partnership firm, the arbitration proceeding itself is not maintainable and, therefore, the award passed in such arbitration proceedings needs to be set aside.

19. In our view, learned Arbitrator, proceeded to pass an award which is beyond the terms of the reference. Learned Arbitrator proceeded to rewrite the contract of partnership between the parties. The existence of partnership document does not permit one of the partners to carry on business to the exclusion of the other. Moreover, as noted above, the award does not provide for the sharing of losses should the partnership firm incur the same.
20. As a Court exercising jurisdiction under Section 37 of the Act of 1996, we are to evaluate as to whether the Section 34 Court applied the correct parameters in deciding on the challenge to the award before it.
21. We find that the award passed by the learned Arbitrator tantamounts to rewriting the partnership agreement between the parties. It is, therefore, against public policy.
22. In view of the discussions above, we hold that, the Court exercising jurisdiction under Section 34 of the Act of 1996 did not apply the correct parameters in evaluating the award.
23. Challenge to the award dated December 4, 2015 succeeds. Award dated December 4, 2015 is set aside. Impugned judgment and order dated June 30, 2018 is set aside.
24. **AO-COM/38/2026** is accordingly **allowed** without any order as to costs.

(Debangsu Basak, J.)

25. I agree

(Aryak Dutt, J.)

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