A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6008 of 2025

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Narayan Naik .... ***Petitioner(s)***

-versus-

Ranjita Naik & Ors. .... ***Opposite Party (s)***

Advocates appeared in the case throughHybrid Mode:

For Petitioner(s) : *Mr. Jaydeep Pal, Adv.*

For Opposite Party (s) : *Mr. Amit Prasad Bose, Adv.*

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-20.03.2025
DATE OF JUDGMENT:-16.05.2025

Dr. S.K. Panigrahi, J.

1. The present Writ Petition is preferred by the Petitioner challenging order dated 05.2.2025 passed by the Ld. Sr. Civil Judge (Commercial Court), Bhubaneswar in ARBP Case No.91 of 2024.

I. FACTUAL MATRIX OF THE CASE:

2. The present Petitioner and Late Satyabrata Naik were partners of a partnership firm in the name and style of "Rajlaxmi Jewellers" having its principal place of business at Plot No. 430, Khata No. 3228, Ground Floor, At/PO – Nayapalli, Chennai Kolkata Highway, Bhubaneswar, Khurdha – 751012. The Partnership Firm was constituted on 16.8.2017 and the Partnership Deed contains the following relevant clauses:

i. *"2. That the firm shall be deemed to have been constituted with effect from 16.8.2017 and shall be a Partnership – At – Will."*

ii. *"9. That the shares of the partners in both Profit and Loss shall be EQUAL."*

iii. *"15. That the firm shall not be dissolved upon the death of any partner and shall continue to be carried on with heir, successor or legal representative of the deceased partner."*

iv. *"16. That in case of dispute, the matter shall be referred to a single arbitrator selected and appointed by both the partners and his/her decision shall be final and binding to both the partners."*

3. Unfortunately, Late Satyabrata Naik expired on 10.8.2024, leaving behind the Opposite Parties as his legal heirs and successors in interest. The Opposite Parties, by virtue of Clause 15 of the Partnership Deed as reproduced above, claim to have stepped into the shoes of Late SatyabrataNaik to continue the Partnership Firm.

4. However, it is alleged by the Opposite Parties that the present Petitioner was causing obstruction and hindering their access to the books of the Firm, apart from restricting their entry into the place of business and generally causing mischief to personally gain. Thereafter, relying on Clause 16 of the Partnership Deed, the present Opposite Parties *vide* Notice dated 11.9.2024 sought the appointment of a sole arbitrator for adjudicating upon the disputes between the Parties.

5. Upon receiving no response to the Notice dated 11.9.2024, the present Opposite Parties approached the Court of Ld. Sr Civil Judge

(Commercial Court), Bhubaneswar vide ARBP 91 of 2024 u/s 9 of the A&C Act, seeking the following interim reliefs:

> *"It is therefore prayed that your honour may graciously be pleased*
>
> *a. To preserve the business establishment i.e. Rajlaxmi Jewelers, Nayapalli, Bhubaneswar, Dist. Khurda and necessary order in this regard be passed for its interim custody.*
>
> *b. Injunct the Respondent No. 1 from obstructing the Petitioners to enter into the business premises and to look after the business affairs of the firm and to take any coercive action as against the Petitioners.*
>
> *c. Cost of the proceeding be awarded in favour of the Petitioners.*
>
> *d. Any other reliefs as deem fit and proper be awarded in favour of the petitioners..."*

6. In response to the same, the present Petitioner filed an application under Order VII Rule 11 of the Civil Procedure Code and Section 2(1)(e) of the A&C Act for return of the plaint u/s 9 of the A&C Act preferred by the Opposite Parties on the broad following grounds:

a. That the present Opposite Parties have not placed any document on record to show that they are the legal heirs of Late SatyabrataNaik.

b. That the present Opposite Parties are not "party" to the Partnership Deed and as such they have no cause of action to invoke arbitration.

c. That the petition u/s 9 of the A&C Act preferred by the Opposite Parties is filed contrary to Order VI Rule 15(A) of CPC.

7. The present Opposite Parties filed their objection to the application under Order VII Rule 11 of the Civil Procedure Code preferred by the Petitioners on the broad following grounds:

a. That Order VII Rule 11 of the Civil Procedure Code is not applicable in a proceeding u/s 9 of the A&C Act.

b. That none of the limited grounds under which an Order VII Rule 11 CPC can be entertained are satisfied by the present Petitioner.

c. That the present Opposite Parties are the legal heirs of Late SatyabrataNaik and it was highlighted that the present Petitioner is not disputing them being legal heirs but has merely said that no document has been filed with the petition showcasing the same, which is a procedural defect and can be cured. It is not anybody's case that the present Opposite Parties have no locus standi. The Petitioner and Later SatyabrataNaik are brothers and as such, the Petitioner is relying on frivolous grounds to vex the process of law adopted by the present Opposite Parties.

8. *Vide*order dated 5.2.2025 in ARBP Case No. 91 of 2024 the Ld. Sr Civil Judge (Commercial Court), Bhubaneswar rejected the application under Order VII Rule 11 of the CPC preferred by the present Petitioner on merits, after holding that such application was maintainable in a petition u/s 9 of the A&C Act. The petition u/s 9 of the A&C Act was accordingly put up for hearing on objections on 27.2.2025.

9. Aggrieved, the present Petitioner has approached this Court seeking setting aside of order dated 5.2.2025 in ARBP Case No. 91 of 2024 and also seeking a direction for allowing his application filed under Order 7 Rule 11 of CPC to reject the petition filed by the present Opposite Parties.

10. Now that the broad facts leading up to the instant Petition have been laid down, this Court shall endeavour to fully summarise the contentions of the Parties and the broad grounds that have been urged to seeking the exercise of this Court's power.

II. PETITIONER'S SUBMISSIONS:

11. It is submitted by Ld. Counsel for the Petitioner that the impugned order is liable to be set aside as the Opposite Parties are not parties to the Partnership Deed and therefore, not parties to the Arbitration Agreement. The Petitioner contends that upon the death of one partner, the partnership firm shall stand dissolved by operation of law under Section 42(c) of the Partnership Act.

12. It is further contended that the Partnership Deed mentions that the place of business as Cuttack, therefore the petition before the Ld. Sr Civil Judge (Commercial Court), Bhubaneswar lacks jurisdiction.

III. OPPOSITE PARTIES' SUBMISSIONS:

13. *Per contra*, it is submitted by Ld. Counsel for the Opposite Parties that the Ld. Sr Civil Judge (Commercial Court), Bhubaneswar has considered the petition of the present Petitioner on merits and given the bar under Section 8 of the Commercial Courts Act, this Court ought to be slow to interfere with the same.

14. It is further submitted that the present Opposite Parties are known to the Petitioner, as they belong to the same family, therefore, these petitions are mere delay tactics to frustrate, vex and harass the Opposite Parties. The Opposite Parties are legal heirs of the Late SatyabrataNaik and in light of the clear stipulation in Clause 15 of the Partnership Deed, they are deemed to be parties to the Deed. In furtherance of which, it is contended, that they were well within their rights to exercise their option of arbitration.

IV. ISSUES FOR CONSIDERATION:

15. Having heard the parties and perused the materials available on record, this court has identified a singular issue that has to be determined which have emerged contentiously during the course of the hearing and is germane to the decision in the *lis* at hand;

A. WHETHER THE LD. SR CIVIL JUDGE (COMMERCIAL COURT), CUTTACK HAS CORRECTLY ADJUDICATED THE PETITION UNDER ORDER VII RULE 11 PREFERRED BY THE PRESENT PETITIONER?

16. This Court is first required to keep in view the fact that the impugned order has been passed by the commercial Court. In view of the provisionscontained in Section 8 of the Commercial Courts Act, 2015, there is a bar againstentertainingthe revision against an interlocutory order. Sect ion 8 of the Act, 2015 reads as under:

"8. Bar against revision application or petitionagainst an in terlocutory order.

Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shallbeentertained agai nst any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court."

17. The provisions of Section 8 of the Commercial Courts Act, 2015 cannot operate as an absolute bar to exercise of the power under Article 227 of the Constitution of India. Section 8 despite its initial non-obstante clause, cannot operate as an absolute bar to the exercise of the power of judicial review by High Courts, which is conferred by the Constitution of India under Article 227 thereof, since the 2015 Act is a subordinate legislation under the Constitution, the latter being the grundnorm of the Indian legal system cannot obstruct the powers of this Court under Articles 226 and 227 of the Constitution of India.

18. A creature of the Constitution of India cannot act in negation of the provisions of the Constitution of India. This Court is reminded of ***Surya Dev Rai v. Ram ChanderRai***[1], concerned with the impact of the amendment in Section 115 of the CPC brought about by the amendment of the CPC with effect from 1st July, 2002. In the wake of the said amendment, a question arose, whether on such amendment restricting/limiting the orders of the subordinate courts with respect to

[1](2003) 6 SCC 675

which a revision application under Section 115 of the CPC could be preferred to the High Court, an aggrieved person was completely deprived of the remedy of judicial review under Article 227 also. It was held, that curtailment of revisional jurisdiction of the High Court did not take away and could not have taken away the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court, nor was the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. It was further held that the said power continued to exists, untrammelled by the amendment in Section 115 CPC and remained available to be exercised, subject to the rules of self-discipline and practice, which were well settled. Similarly, in ***State of Gujarat v. VakhatsinghjiVajesinghji, Vaghela***[2], ***Jetha Bai and Sons, Jew Town, Cochin v. SunderbasRathenai***[3], ***State of H.P. v. Dhanwant Singh***[4] and ***Union of India v. Major General Shri Kant Sharma***[5] it was held that the legislature cannot take away the power of superintendence of the High Court under Article 227 of the Constitution over all Courts and Tribunals which are within the territories in relation to which the High Court exercises its jurisdiction. Rather, in ***L. Chandra Kumar v. Union of India***[6], judicial review including under Article 227, was held to be a basic feature of the Constitution, even beyond the realm of amendability and Clause 2(d) of Article 323A and Clause 3(d)

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[2]AIR 1968 SC 1481
[3](1988) 1 SCC 722
[4](2004) 13 SCC 331
[5](2015) 6 SCC 773
[6](1997) 3 SCC 261

of Article 323B, to the extent excluded the jurisdiction of the High Court and Supreme Court under Articles 226/227 and 32 of the Constitution with respect to matters falling within the jurisdiction of the Courts and Administrative Tribunals referred to therein, were held to be unconstitutional.

19. The Parliament has, mandated that no civil revision application or petition shall be entertained against the interlocutory order of Commercial Court. The Parliament has taken care to provide that an interlocutory order on the issue of jurisdiction also cannot be made the subject matter of challenge and any challenge to such order shall be raised only in an appeal against the decree of Commercial Court. Having regard to the legislative object and the intent of the legislature in barring the remedy of revision, which is otherwise available to a party in civil proceedings, the exercise of writ jurisdiction under Article 227 of the Constitution of India, though not ousted, yet needs to be informed by the limited nature of the said jurisdiction, lest the legislative object of proscribing revision would be defeated if the legality, propriety and correctness of every order passed by the Commercial Court is examined in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.

20. Thus this petition under Article 226 and 227 of the Constitution of India with respect to orders of the Commercial Courts at the level of the District Judge is maintainable and the jurisdiction and powers of the High Court have not been affected in any manner whatsoever by

Section 8 of the Commercial Courts Act. However, this Court shall endeavour to exercise restraint unless the matter warrants interference.

21. Now this Court shall examine the merits of the Petition.

22. This Court is aware of the fact that this Court and the Supreme Court has time and again undertaken the exercise of adjudicating upon the question whether or not an application under Order 7 Rule 11 CPC can be moved in relation to a pending petition under the A&C Act. Therefore, this Court does not consider it apposite to delve into the maintainability of Order 7 Rule 11 CPC in a Section 9 A&C Act petition, but instead find it more important to focus on the merits of the present challenge.

23. Since the issue in this appeal pertains to the correctness or otherwise of the impugned orders refusing rejection of the plaint, at this stage, I deem it necessary to refer to Order VII Rule 11 of the Code which deals with the grounds for rejection of a plaint:

> *"11. Rejection of plaint. - The plaint shall be rejected in the following cases-*
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> *(a) where it does not disclose a cause of action;*
>
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
>
> *(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*

(d) where the suit appears from the statement in the plaint to be barred by any law:

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provision of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

24. In ***T. Arivandandamv. T.V. Satyapal***[7], the Supreme Court while examining the aforesaid provision has held that the trial court must remember that if on a meaningful and not a formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled.

25. The object of the said provision was laid down by the Supreme Court in ***SopanSukhdeo Sable v. Assistant Charity Commissioner***[8]. Similarly, in ***Popat and Kotecha Property v. State Bank of India Staff Association***[9], the Supreme Court has culled out the legal ambit of Order VII Rule 11 of the Code.

[7](1977) 4 SCC 467
[8](2004) 3 SCC 137
[9](2005) 7 SCC 510

26. It is trite law that not any particular plea has to be considered, but the whole plaint has to be read. As was observed by the Apex Court in ***Roop Lal Sathi v. Nachhattar Singh Gill***[10], only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected. Similarly, in ***Raptakos Brett & Co. Ltd. v. Ganesh Property***[11], it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 Order VII of the Code is applicable.

27. It was further held with reference to Order VII Rule 11 of the Code in ***Saleem Bhai v. State of Maharashtra***[12], that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit i.e. before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

28. In ***R.K. Roja v. U.S. Rayudu***[13], it was reiterated that the only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for

[10](1982) 3 SCC 487
[11](1998) 7 SCC 184
[12](2003) 1 SCC 557
[13](2016) 14 SCC 275

rejection of the plaint. The court has to consider only the plaint as a whole, and in case the entire plaint comes under the situations covered by Order VII Rules 11(a) to (f) of the Code, the same has to be rejected.

29. In ***Kuldeep Singh Pathania v. Bikram Singh Jaryal***[14], the Apex Court observed that the court can only see whether the plaint, or rather the pleadings of the plaintiff, constitute a cause of action. Pleadings in the sense where, even after the stage of written statement, if there is an application filed, in a given situation the same also can be looked into to see whether there is any admission on the part of the plaintiff. In other words, under Order VII Rule 11, the court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the defendant.

30. In an application under Order VII Rule 11 of the Code, a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in ***Maqsud Ahmad v.MathraDatt& Co.***[15]. This principle is also explained in another decision of the Hon'ble Supreme Court in ***Sejal Glass Ltd. v. Navilan Merchants Private Ltd.***[16], which was again followed in ***Madhav Prasad Aggarwal v. Axis Bank Ltd.***[17].

31. In summation, Order VII Rule 11 of the CPC confers upon Courts the jurisdiction to summarily dismiss a plaint at any juncture of the proceedings if it fails to articulate a legitimate cause of action or is

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[14](2017) 5 SCC 345
[15]AIR 1936 Lah 1021
[16](2018) 11 SCC 780
[17](2019) 7 SCC 158

precluded by statutory provisions. This procedural mandate serves to obviate frivolous and vexatious litigation, thus conserving judicial resources. The Supreme Court has elucidated the import of this provision in ***Azhar Hussain v. Rajiv Gandhi***[18]. In the application of this rule, as expounded in ***Geetha v. Nanjundaswamy***[19] and evaluated in ***Hardesh Ores (P) Ltd. v. Hede& Co.***[20], the Court must scrutinize the plaint in its entirety, accepting the averments therein as prima facie true. This authority is exercisable at any stage of the suit, as reiterated in ***Saleem Bhai v. State of Maharashtra***[21].

32. It is trite in law that if clever drafting has created the illusion of a cause of action, it has to be nipped in the bud. However, this Court, upon a bare perusal of the averments made in the plaint is not of the prima facie opinion that the same lacks in making out a cause of action or suffers from any of the 6 infirmities available to the present Petitioner in a petition under Order VII Rule 11.

33. Where no provision is made in the Partnership Deed between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is a 'partnership at will'. In the present case, the same has been specifically mentioned in the Partnership Deed as well at Clause 2.

34. Section 42(C) of the Indian Partnership Act, clearly stipulates that a Partnership shall be dissolved upon death of a partner "subject to the

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[18] 1986 Supp SCC 315
[19] 2023 SCC OnLine SC 1307
[20] (2007) 5 SCC 614
[21] (2003) 1 SCC 557

contract between the parties". The intent of the Parties entering into the contract is paramount. In the present case, the Partnership Deed at Clause 15 provides for furthernon-automatic determination due to death of a partner by stating that *"the firm shall not be dissolved upon the death of any partner and shall continue to be carried on with heir, successor or legal representative of the deceased partner"*.

35. However, this Court does take note of the fact that, it is now a settled position of law, that this introduction of legal heirs is not automatic. The surviving partner and the legal heirs have to enter into a reconstituted/amended Partnership Deed for this Clause to have any effect in law. The same having not been done, given the tense relationship between the parties, is another dispute which is referable to arbitration as the Partnership Deed clearly uses the word "*shall*".

36. This Court, finds no merit in the present Writ Petition and does not deem it an appropriate case to exercise its jurisdiction. The Ld. Sr. Civil Judge (Commercial Court), Bhubaneswar has not made any error in law that would warrant interference.

V. CONCLUSION:

37. In the above backdrop of the case, the Writ Petition is **dismissed**. The Ld. Sr. Civil Judge (Commercial Court), Bhubaneswar shall proceed with the application under Section 9 of the A & C Act preferred by the Opposite Parties. The Parties shall cooperate with prompt adjudication so as to enable early resolution of their dispute.

38. No order as to costs. Ordered accordingly.

39. Interim order, if any, passed earlier stands vacated.

(Dr.S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 16th May, 2025/