

A ANANTHESH BHAKTA REPRESENTED
BY MOTHER USHA A.BHAKTA & ORS.

v.

B NAYANA S. BHAKTA & ORS.
(Civil Appeal No.10837 of 2016)

NOVEMBER 15, 2016

[R. K. AGRAWAL AND ASHOK BHUSHAN, JJ.]

Arbitration and Conciliation Act, 1996:

C s.8(2) – Interpretation of – Application for reference of
parties to arbitration not to be entertained unless accompanied by
original arbitration agreement or a duly certified copy thereof –
When not applicable – Held: s.8(2) has to be interpreted to mean
D that the Court shall not consider any application for reference of
parties to arbitration, unless accompanied by original arbitration
agreement or duly certified copy thereof – However, filing the
application without such original or certified copy, but bringing
original arbitration agreement on record at the time when the Court
is considering the application shall not entail rejection of the
application u/s. 8(2) – On facts, the original Deeds of Partnership
E and Retirement from Partnership, containing arbitration clause, were
filed by respondents-defendants, three days after filing the
application seeking reference to arbitration – It was only after filing
of original deeds that the Court proceeded to decide the
F application – Further, the deeds were also relied on by the appellants-
plaintiffs themselves – Thus, appellants’ plea that application of
respondents was liable to be rejected u/s.8, dismissed.

G Disputes relating to benefits arising out of Deeds of
Partnership and Retirement from Partnership – Deeds containing
arbitration clause/agreement – Reference to arbitration –
Permissibility – Plea of Plaintiffs that dispute in question cannot be
referred to arbitration since one of the defendants was not a party
to the arbitration agreement – Held: Not acceptable, since the
defendant was impleaded by the plaintiffs themselves – Party –
Partnership.

H Disputes concerning unregistered partnership deed, if can

be referred to arbitration – Effect of such non-registration, if any – A
Held: On facts, both the Deeds of Partnership and Retirement from
Partnership contained an arbitration clause – Thus, when the
partners and those claiming through them agreed to get the dispute
settled by arbitration, it is not open for the appellants to contend
that partnership being unregistered partnership, the dispute cannot B
be referred to arbitration – Registration Act, 1908 – Partnership.

Words and phrases – ‘entertained’ – Meaning of, in context
to s.8(2), Arbitration and Conciliation Act, 1996 – Explained.

Dismissing the appeal, the Court

HELD: 1.1 Section 8(2) of the Arbitration and Conciliation C
Act, 1996 has to be interpreted to mean that the Court shall not
consider any application filed by the party under Section 8(1)
unless it is accompanied by original arbitration agreement or duly
certified copy thereof. The filing of the application without such
original or certified copy, but bringing original arbitration D
agreement on record at the time when the Court is considering
the application shall not entail rejection of the application under
Section 8(2). [Para 22] [76-E-F]

1.2 In the present case, only after the original Retirement
Deed and Partnership Deed were filed by the respondents- E
defendants on 12th May, the Court proceeded to decide the
respondents-defendants’ application, seeking reference to
arbitration, on 9th May. Further, the Retirement Deed and
Partnership Deed were also relied by the plaintiffs. Hence, the
argument that the defendants’ application seeking reference to F
arbitration was not accompanied by original deeds and hence,
liable to be rejected, cannot be accepted. The Plaintiffs admittedly
were parties to the arbitration agreement. On facts, it cannot be
said that merely because one of the defendants i.e. defendant no.
6 whom they had impleaded was not party to the arbitration
agreement, the dispute between the parties which essentially G
related to the benefits arising out of Retirement Deed and
Partnership deed cannot be referred. [Paras 21, 23, 26] [76-D-
E, G; 77-F-G]

1.3 In the present case there was no dispute between the
parties that both Retirement Deed and Partnership Deed H

A contained an arbitration clause. When the partners and those who
 claim through partners agreed to get the dispute settled by
 arbitration, it is not open for the appellants to contend that
 partnership being unregistered partnership, the dispute cannot
 be referred. The appellants have not been able to show any
 B statutory provision either in 1996 Act or in any other statute from
 which it can be said that dispute concerning unregistered
 partnership deed cannot be referred to arbitration. [Paras 28,
 29] [78-F; 79-B-D]

C *Hindusthan Commercial Bank Ltd. v. Punnu Sahu
 (Dead) through Legal Representatives* 1971 (3) SCC
 124; *Martin and Harris Ltd. v. Vith Additional District
 Judge and others.* 1998 (1) SCC 732 : 1997 (6) Suppl.
 SCR 380 – relied on.

D *Atul Singh & Others v. Sunil Kumar Singh & Others.*
 2008 (2) SCC 602 : 2008 (1) SCR 44 – distinguished.

*Bharat Sewa Sansthan v. U.P. Electronics Corporation
 Ltd.* 2007 (7) SCC 737 : 2007 (9) SCR 533 – referred
 to.

E *P. Ramanatha Aiyar's Advanced Law Lexicon and
 Blacks Law Dictionary* – referred to.

Case Law Reference

2008 (1) SCR 44 distinguished Para 15

2007 (9) SCR 533 referred to Para 16

1971 (3) SCC 124 relied on Para 19

1997 (6) Suppl. SCR 380 relied on Para 20

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10837
 of 2016.

G From the Judgment and Order dated 08.07.2014 of the High Court
 of Karnataka at Bangalore in CRP No. 219 of 2014.

G. V. Chandrashekar (For Ms. Anjana Chandrashekar), Advs.,
 for the Appellants.

V. N. Raghupathy, Adv., for the Respondents.

H The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. Leave granted. A

2. This appeal has been filed against judgment dated 08.07.2014 of High Court of Karnataka in Civil Revision No. 219 of 2014. The Civil Revision was filed by the appellants against the judgment and order dated 27th May, 2014 of vacation District Judge, Mangalore in Original Suit No. 5 of 2014 filed by the appellants/plaintiffs. In the Suit, I.A. No. B IV was filed by the defendants/respondents under Section 8(1) of Arbitration and Conciliation Act, 1996, relying on arbitration agreement in retirement deed dated 25.07.2005(hereinafter referred to as retirement deed) as well as in the partnership deed dated 05.04.2006(hereinafter referred to as partnership deed). Learned District Judge has allowed the application filed by the defendant under Section 8(1) of 1996 Act. C Parties to the suit were referred to the arbitration to settle the dispute as per arbitration agreement. The High Court vide impugned judgment has affirmed the order of Trial Court with observation that parties can press for an early trial. The Revision Petition was disposed of accordingly. D Aggrieved against the judgment of High Court, the appellants/plaintiffs have filed this appeal.

3. The brief facts necessary to be noted for deciding this appeal are:

(i) Late Ramabhakta had started a business of manufacture and sales of 'Beedi' under the name 'M/s Neo Subhash Beedi Works'. After his demise, his six sons, namely, late M. Narasimha Bhakta, late M. Subhaschandra Bhakta, late M. Prakashchandra Bhakta, late M. Ganesh Bhakta, late M. Gangadhar Bhakta and late M. Ashok Bhakta, constituted the partnership firm. E F

(ii) M. Narsimha Bhakta retired from the firm as per the release deed dated 30.06.1986 and the remaining partners continued with the firm.

(iii) M.Prakashchandra Bhakta died on 20.03.1995 and as per his Will, his minor son Master M. Vinayaka Bhakta was admitted to the partnership as per partnership deed dated 21.03.1995. On 06.03.1997, Subhaschandra Bhakta died and his LRs, namely Defendant Nos. 1 to 4 became partners. Ashok Bhakta died on 18.09.2001. The first plaintiff is son of late Ashok Bhakta. G H

A (iv) On 25.07.2005, retirement deed was executed in which
 Defendant Nos.1 to 4 were stated to have retired from
 partnership. The partnership deed dated 05.04.2006 was
 entered between late M. Gangadhar Bhakta, M. Vinayaka
 Bhakta, Defendant No. 5 and M. Vipin Bhakta(S/o late M.
 B Ganesh Bhakta) and Master M. Anantesh B h a k t a , 1st
 Plaintiff. M.Gangadhar Bhakta expired and his estate is
 represented by the Plaintiff Nos. 2 & 3.

C 4. The suit for partition was filed by M. Prakaschandra Bhakta
 and others against M. Subhaschandra Bhakta and others, being O.S.
 NO. 4 of 1985. The preliminary decree was passed on 31.07.1986. M.
 Subhaschandra Bhakta and others filed FDP No. 24 of 1992 for
 preparation of final decree in which the compromise petition dated
 04.04.1994 was filed and compromise decree was passed on 05.04.1994.
 As per the compromise decree, Item No. 1 of 'A' schedule property
 was allotted to M. Subhaschandra Bhakta and Item No. 2 was allotted
 D to M. Prakashchandra Bhakta.

5. An agreement to sale dated 19.04.1993 was executed by M.
 Prakashchandra Bhakta in favour of partnership firm. Similar agreement
 to sell dated 19.04.1993 was also executed by M.Subhaschandra Bhakta
 in favour of firm.

E 6. A Suit No. 5 of 2014 was filed by three Plaintiffs (appellants)
 against six Defendants who are Respondent Nos. 1 to 6 in this appeal
 praying for permanent prohibitory injunction restraining the Defendants
 or anyone claiming through them for transferring or alienating 'A' schedule
 property. Further, the permanent prohibitory injunction was sought against
 F the Defendant regarding possession and enjoyment of property by Plaintiff.
 The Defendant had filed I.A.No.IV under Section 8(1) of Arbitration
 and Conciliation Act, 1996 (hereinafter referred to as Act) on 09.05.2014,
 praying to pass an order referring the parties to the arbitration for
 adjudication of the disputes raised by the Plaintiff in the Suit. The
 application was not accompanied by retirement deed and partnership
 G deed.

7. On 12.05.2014, the original retirement deed and the partnership
 deed were produced by the Defendant along with the list. The counter
 affidavit to the application I.A. No. IV was also filed by the Plaintiff.
 The Learned District Judge heard the I.A.No.IV as well as the objections
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raised by the Plaintiff and by an order dated 27.05.2014, passed the following order: A

“I.A.No. IV filed under Section 8(1) of the Arbitration and Conciliation Act, 1996 by the defendants is allowed.”

The parties to the suit are referred to the Arbitration to settle their disputes and differences, in view of the Arbitration Agreement. B

The suit of the plaintiffs stands disposed off accordingly.” C

8. Learned Counsel appearing for appellants in support of this appeal raised following submissions:

(i) The application I.A.No.IV of 2014 praying for referring the matter to arbitration was not accompanied by the original retirement deed dated 25.07.2005 and partnership deed dated 05.04.2006, hence the application was liable to be dismissed under Section 8(2) and Learned District Judge committed error in allowing the application. According to Section 8(2) of the Act, it is mandatory to file the original arbitration agreement or a duly certified copy thereof along with the application seeking reference to the arbitration. D

(ii) All the parties to the suit were not parties to the arbitration agreement as claimed in retirement deed and partnership deed. Hence, dispute could not have been referred to the arbitrator. E

(iii) The firm being an unregistered firm, no reference to the arbitration can be made with regard to the dispute relating to unregistered firm. F

9. Learned counsel appearing for respondents have refuted the submissions and contends that Learned District Judge after considering all aspects of the matter have rightly made the reference to the arbitrator. It is submitted that there was clear arbitration agreement in the retirement deed as well as in the partnership deed as has been noted by District Judge and the suit could not have proceeded. All the Plaintiffs as well as Defendant Nos. 1 to 4 and Defendant No. 5 were parties to the arbitration agreement either personally or claiming through the person who was party to the agreement. The Defendant No. 6 has not inherited any right G

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A in the partnership firm and was unnecessarily impleaded by the Plaintiff. Mere presence of Defendant No.6 as one of the Defendants does not preclude the implementation of arbitration agreement. With regard to non-filing of retirement deed and partnership deed along with application I.A.No. IV of 2014, two submissions have been raised. Firstly, it is contended that the Plaintiff themselves has filed both retirement deed and partnership deed along with the list of documents and having admitted both retirement deed and partnership deed, non-filing along with the application I.A.No. IV was inconsequential. Secondly, the Defendant themselves immediately after three days of filing their I.A.No. IV of 2014 had filed the original retirement deed and partnership deed on 12.05.2014 and at the time the matter was considered by District Judge, original deeds were on the record. Hence, the application I.A.No. IV was not liable to be rejected on this ground. There is no such provision which prohibits the adjudication of dispute by arbitration regarding an unregistered partnership firm.

D 10. We have considered the submissions of learned counsel for the parties and perused the records.

11. From the pleadings on records and submissions made, following three issues arises for consideration:

E (1) Whether non-filing of either original or certified copy of retirement deed and partnership deed along with application I.A.No. IV dated 09.05.2014 entailed dismissal of the application as per section 8(2) of 1996 Act.

F (2) Whether the fact that all the parties to the suit being not parties to the retirement deed/partnership deed, the Court was not entitled to make the reference relying on arbitration agreement.

(3) Whether dispute pertaining to unregistered partnership deed cannot be referred to an arbitration despite there being arbitration agreement in the deed of retirement/partnership deed.

G **ISSUE NO.(1)**

H 12. Two facts which emerged from record in this respect need to be noted. Firstly, the plaintiffs in their plaint of O.S.No. 5 of 2014 have referred to and admitted the retirement deed dated 25.07.2005 and partnership deed dated 05.04.2006 in para 5 of the plaint. The plaintiffs themselves have filed the photocopies of deed of retirement dated

25.07.2005 as the document no. 6 in the list and photocopies of partnership deed dated 05.04.2006 as document no. 7 as have been noted in para 23 of the District Judge judgment. A

Further, although initially the application filed by Defendant I.A.No. IV dated 09.05.2014 was not accompanied by copy of retirement deed and partnership deed. The Defendant on 12.05.2014 filed the original retirement deed and partnership deed along with the list. It is useful to note the findings recorded by District Judge in the above context in paragraph 39 which is to the following effect: B

“39. The materials on record clearly goes to show that I.A.No. IV was filed by the defendants on 09.05.2014. It is true that the application was not accompanied by the Retirement Deed and the Partnership Deed either the originals or the certified copies. On 12.05.2014 the original Retirement Deed and the Partnership Deed were produced by the defendants along with the list.” C

13. Section 8 which falls for consideration in the present case provides as follows: D

“ 8. 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 so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration. E

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof. F

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.” G

14. The appellants submit that sub-section (2) of Section (8) provides that “the application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement H

A or a duly certified copy thereof.” They submit that admittedly with the application I.A.No. IV filed on 09.05.2014, original or certified copy of the Retirement Deed and Partnership Deed was not filed.

15. Learned Counsel to the appellants also placed reliance on a judgment of this court reported in *2008 (2) SCC 602, Atul Singh & Othes Vs. Sunil Kumar Singh & Others*. In the above case, defendant had moved a petition on 28.02.2005 praying for referring the dispute to arbitration. The Trial Court had dismissed the petition on the ground that the predecessor in interest of the plaintiff was not party to the Partnership Deed executed on 17.02.1992. Hence the main relief being declaration of the deed to be void which could have been granted only by the Civil Court, the dispute could not be referred. Defendant filed Civil Revision which was allowed by the High Court. One of the submissions made before this court was that as per sub-section (2) of Section (8), the application could not have entertained unless it was accompanied by original arbitration agreement or duly certified copy thereof. This court held that there is no whisper in the petition that the original agreement or a duly certified copy is being filed. There was non compliance of Section 8(2). Hence the reference could not have been made. Following was stated by this court in paragraph 19:

E “ 19. *There is no whisper in the petition dated 28.02.2005 that the original arbitration agreement or a duly certified copy thereof is being filed along with the application. Therefore, there was a clear non-compliance with sub-section (2) of Section 8 of the 1996 Act which is a mandatory provision and the dispute could not have been referred to arbitration. Learned counsel for the respondent has submitted that a copy of partnership deed was on the record of the case. However, in order to satisfy the requirement of sub-section (2) of Section 8 of the Act, Defendant 3 should have filed the original arbitration agreement or a duly certified copy thereof along with the petition filed by him on 28.02.2005, which he did not do. Therefore, no order for referring the dispute to arbitration could have been passed in the suit.*”

H It is relevant to note that in *Atul Singh’s case (Supra)*, the submission of respondent was noticed that the copy of the Partnership

Deed was on the record of the case, but the Court has not proceeded to A
examine as to when such copies are already on record what is the effect.

16. In this context, the reference is made to judgment of this Court
in 2007 (7) SCC 737, *Bharat Sewa Sansthan Vs. U.P.Electronics
Corporation Ltd.*

In the above case, two judge bench of this Court has held that B
photocopies of lease agreement could be taken on record under Section
8 for ascertaining the existence of arbitration clause. Following was
stated in paragraph 24:

*“24. The respondent Corporation placed on record of C
the trial court photocopies of the agreements along with
an application under Section 8(1) of the Arbitration
Act. The High Court, in our view, has rightly held that
the photocopies of the lease agreements could be taken
on record under Section 8 of the Arbitration Act for
ascertaining the existence of arbitration clause. Thus, D
the dispute raised by the appellant Sansthan against
the respondent Corporation in terms of the arbitration
clause contained in the lease agreement is arbitral.”*

In the case of *Atul Singh (Supra)*, which was also a judgment of
two Judge Bench, earlier judgment in *Bharat Sewa Sansthan* was not E
cited. However, for purposes of this case, we need not enter into the
issue as to whether there is a compliance of section 8(2) if photocopies
of the arbitration agreement is already on the record and not disputed
by the parties.

17. There is one another aspect of the matter which is sufficient F
to uphold the order of the District Judge. Section 8(2) uses the phrase
“shall not be entertained”. Thus, what is prohibited is the entertainment
of the application unless it is accompanied by the original arbitration
agreement or a duly certified copy thereof.

18. The word ‘entertained’ has specific meaning in *P. Ramanatha G
Aiyar’s Advanced Law Lexicon* word ‘entertained’ has been defined
as:

*“ 1. To bear in mind or consider, esp, to give judicial H
consideration to (the Court then entertained motions
for continuance).*

A 2. *To amuse or please.*

3. *To receive(a person) as a guest or provide hospitality to (a person).*

B *The expression 'entertain' means to 'admit a thing for consideration' and when a suit or proceeding is not thrown out in limine but the Court receives it for consideration and disposal according to law it must be regarded as entertaining the suit or proceeding, no matter whatever the ultimate decision might be."*

C The ***Blacks Law Dictionary*** also defines this word 'entertain' as follows:

"To bear in mind or consider; esp., to give judicial consideration to <the court then entertained motions for continuance>"

D 19. In 1971 (3) SCC 124, ***Hindusthan Commercial Bank Ltd. Vs. Punnu Sahu (Dead) through Legal Representatives***, the word 'entertained' came for consideration as occurring in Order 21, Rule 90, Proviso of Civil procedure Court. Para 2 of the Judgment notices the amended Proviso which was to the following effect:

E *"2. The amended proviso with which we are concerned in this appeal reads thus:*

'Provided that no application to set aside a sale shall be entertained-

F *(a) upon any ground which could have been taken by the applicant on or before the date on which the sale proclamation was drawn up; and*

G *(b) Unless the applicant deposits such amount not exceeding twelve and half percent of the sum realised by the sale or furnishes such security as the Court may, in its discretion, fix except when the Court for reasons to be recorded dispense with the requirements of this clause:*

Provided further that no sale shall be set aside on the ground of irregularity or fraud unless upon the

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facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.” A

The contention of the appellant was that word ‘entertain’ refers to initiation of the proceedings and not to the stage when the Court takes up the application for consideration. The High Court had rejected the said contention. The above view of the High Court was approved by this court in paragraph 4 of the judgment. Following was stated: B

“4. Before the High Court it was contended on behalf of the appellant and that contention was repeated in this court, that Clause (b) of the proviso did not govern the present proceedings as the application in question had been filed several months before that clause was added to the proviso. It is the contention of the appellant that the expression ‘entertain’ found in the proviso refers to the initiation of the proceedings and not to the sage when the Court takes up the application for consideration. This contention was rejected by the High Court relying on the decision of that Court in *Kundan Lal Vs. Jagan Nath Sharma, AIR 1962 All 547*. The same view had been taken by the said High Court in *Dhoom Chand Jain V. Chamanlal Gupta, AIR 1962 All 543* and *Haji Rahim Bux and Sons V. Firm Samiullah and Sons, AIR 1963 All 320* and again in *Mahavir Singh V. Gauri Shankar, AIR 1964 All 289*. These decisions have interpreted the expression ‘entertain’ as meaning ‘adjudicate upon’ or ‘proceed to consider on merits’. This view of the High Court has been accepted as correct by this Court in *Lakshmiratan Engineering Works Ltd. V. Asst. Comm., Sales tax, Kanpur, AIR 1968 SC 488*. We are bound by that decision and as such we are unable to accept the contention of the appellant that Clause (b) of the proviso did not apply to the present proceedings.” C
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20. Another relevant judgment is 1998 (1) SCC 732, *Martin and Harris Ltd. Vs. VIth Additional District Judge and others*. In the above case Section 21(1) proviso of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (13 of 1972) H

A word 'entertained' came for consideration. The proviso to Section 21(1) was to the following effect:

B “ 8. Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of the Act, no application shall be entertained on the grounds, mentioned in clause(a) unless a period of three years has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years.”

C In the above case, the application under Section 21(1) was filed by the landlord before expiry of period of three years from the date of purchase. It was held by this Court that word 'entertained' as employed in first proviso under Section 21(1) could not mean 'institution' of such proceedings. In Para 9 and 10, following was laid down:

D “9. Even that apart there is an internal indication in the first proviso to Section 21(1) that the legislature has made a clear distinction between 'entertaining' of an application for possession under Section 21(1)(a) of the Act and 'filing' of such application. So far as the filing of such application is concerned it is clearly indicated by the legislature that such application cannot be filed before expiry of six months from the date on which notice is given by the landlord to the tenant seeking eviction under Section 21(1)(a) of the Act. The words, "the landlord has given a notice in that behalf to the tenant not less than six months before such application", would naturally mean that before filing of such application or moving of such application before the prescribed authority notice must have preceded by at least six months. Similar terminology is not employed by the legislature in the very same proviso so far as three years' period for entertaining such application on the grounds mentioned in clause (a) of Section 21(1) a stage must be reached when the court

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applied its judicial mind and takes up the case for decision on merits concerning the grounds for possession mentioned in clause (a) of Section 21(1) of the Act. Consequently on the very scheme of this Act it cannot be said that the word 'entertain' as employed by the legislature in the first proviso to Section 21(1) of the Act would at least mean taking cognizance of such an application by the prescribed authority by issuing summons for appearance to the tenant-defendant. It must be held that on the contrary the term 'entertain' would only show that by the time the application for possession on the grounds mentioned in clause (a) of Section 21(1) is taken up by the prescribed authority for consideration on merits, atleast minimum three years' period should have elapsed since the date of purchase of the premises by the landlord.

10. *Learned Senior Counsel, Shri Rao, for the appellant then invited our attention to two decisions of this Court in the case of Lakshmiratan Engineering Works Ltd. V. Asstt. Commr. (Judicial) I, Sales Tax and Hindusthan Commercial bank Ltd V. Punnu Sahu. In Lakshmiratan Engineering this Court was concerned with the meaning of the word 'entertain' mentioned in the proviso to Section 9 of the U.P. Sales Tax Act, 1948. Hidayatullah, J., speaking for the Court observed in the light of the statutory scheme of Section 9 of the said Act that the direction to the Court in the proviso to Section 9 was to the effect that the Court shall not proceed to admit to consideration an appeal which is not accompanied by satisfactory proof of the payment of the admitted tax. In the case of Hindusthan Commercial Bank the term 'entertain' as found in the proviso to Order XXI Rule 90 Code of Civil Procedure (CPC) fell for consideration of the Court. Hegde, J., speaking for a Bench of two learned Judges of this Court in this connection observed that the term 'entertain' in the said provision means 'to adjudicate upon' or 'to proceed to consider on merits' and did not mean 'initiation of proceeding'. The aforesaid*

A *decisions, in our view, clearly show that when the*
question of entertaining an application for giving relief
to a party arises and when such application is based
on any grounds on which such application has to be
considered, the provision regarding 'entertaining such
B *application' on any of these grounds would necessarily*
mean the consideration of the application on the merits
of the grounds on which it is base. In the present case,
therefore, it must be held that when the legislature has
provided that no application under Section 21(1)(a) of
C *the Act shall be entertained by the prescribed authority*
on grounds mentioned in clause (a) of Section 21(1) of
the Act before expiry of three years from date of
purchase of property by the landlord it must necessarily
mean consideration by the prescribed authority of the
grounds mentioned in clause (a) of Section 21(1) of the
D *Act on merits."*

21. In the present case as noted above, the original Retirement Deed and Partnership Deed were filed by the defendants on 12th May and it is only after filing of original deeds that Court proceeded to decide the application I.A.No. IV.

E 22. Section 8(2) has to be interpreted to mean that the court shall not consider any application filed by the party under Section 8(1) unless it is accompanied by original arbitration agreement or duly certified copy thereof. The filing of the application without such original or certified copy, but bringing original arbitration agreement on record at the time when the Court is considering the application shall not entail rejection of
F the application under Section 8(2).

23. In the present case it is relevant to note the Retirement Deed and Partnership Deed have also been relied by the plaintiffs. Hence, the argument of plaintiffs that defendants' application I.A.No. IV was not accompanied by original deeds, hence, liable to be rejected, cannot be
G accepted. We are thus of the view that the appellants submission that the application of defendants under Section 8 was liable to be rejected, cannot be accepted.

ISSUE NO. 2

H 24. The relevant facts and pleadings of the parties have been

marshaled by the trial court. Trial Court has returned the findings that the plaintiff no. 1 represented by his mother and next friend was party to the Retirement Deed. The mother of plaintiff namely Smt. Usha A. Bhakta has signed the retirement deed for self and on behalf of her minor children, the plaintiff No. 1. Plaintiff No. 2 and 3 claiming their rights through one of the partners Shri Gangadhar Bhakta, their father, who was party to the retirement deed. In paragraph 23 of the judgment, Learned District Judge had returned the following findings: A B

“...therefore, the plaintiff no. 1 represented by his mother and next friend Smt. Usha A. Bhakta is a party to the Retirement Deed and plaintiffs 2 and 3 are claiming their rights through one of the partner late Shri Gangadhar Bhakta, who was also a party to the Retirement Deed. The Defendants 1 to 5 are also the parties to this Retirement Deed. Therefore, except defendant No. 6 all others are either personally or through the persons from whom they are claiming the right are parties to the Deed of Retirement Deed dated 25.07.2005...” C D

Thus it was only defendant no. 6 who was not party to the retirement deed or partnership deed. Both 5th and 6th defendants are issues of late M. Prakashchandra Bhakta. E

25. Learned Counsel for the respondents have submitted that it was case of the plaintiffs themselves that by virtue of Will executed by M.Prakashchandra Bhakta it was only defendant no. 5 who became entitled to benefits of partnership and defendant no. 6 was not given any share. F

26. The plaintiffs admittedly are parties to the arbitration agreement as noted above. It does not lie in their mouth to contend that since one of the defendants whom they have impleaded was not party to the arbitration agreement, no reference can be made to the arbitrator. In the facts of the present case, it cannot be said that merely because one of the defendants i.e. defendant no. 6 was not party to the arbitration agreement, the dispute between the parties which essentially relates to the benefits arising out of Retirement Deed and Partnership deed cannot be referred. G

27. Learned District Judge has noted that defendant no.6 has not inherited any share either in Partnership deed or in the schedule property H

A and hence there is no question of bifurcation of either cause of action or parties. Relevant findings in this context have been returned by District Judge in paragraph 40 to the following effect:

B *“40...It is only defendant No. 6 was not the party to either the Retirement Deed or the Partnership Deed where there is an Arbitration Clause to refer all the disputes and differences to the Arbitration. Even according to the plaintiffs defendant No. 6 is not a Partner nor she is a party to any of the documents and further as per the Will executed by her father late Shri Prakash Chandra Baktha, she has not inherited any*

C *right or share either in the Partnership Deed or in the Schedule property. Moreover, the Plaintiff schedule property according to the plaintiffs is the property of the Partnership Firm M/s. 'Neo Subhash Beedi Works'. Therefore, there is no question of bifurcation of either*

D *cause of action or parties if the same is to be referred to the Arbitration as per the Arbitration Clause formed in the Retirement Deed dated: 25.07.2005 and the Partnership Deed dated 05.04.2006...”*

We fully endorse the above view taken by Learned District Judge.

E **ISSUE NO. 3**

28. The submission by the appellants is that partnership being an unregistered partnership, no reference can be made to the arbitration. In the present case there is no dispute between the parties that both Retirement deed and Partnership deed contain an arbitration clause. In Retirement deed which had been signed by retiring partners, continuing partners and concurring partners, following was stated in clause 8:

G *“...In case of any dispute or difference arising between the parties, regarding the interpretation of the contents of this Deed of Retirement or any other matter or transactions touching the said retirement, it shall be referred to an arbitration under the provisions of the Arbitration & Conciliation Act, 1996...”*

Further, in partnership deed which was 05.04.2006, clause 26 contains an arbitration clause which is to the following effect:

H

“ 26. ALL DISPUTES arising between the partners or their legal representatives about the interpretation of this Deed or their rights and liabilities there under or in relation to any other matters whatsoever touching the partnership affairs shall be decided by an Arbitration as provided by the Arbitration & Conciliation Act, 1996.”

A

B

When the partners and those who claim through partners agreed to get the dispute settled by arbitration, it is not open for the appellants to contend that partnership being unregistered partnership, the dispute cannot be referred.

C

29. The appellants have not been able to show any statutory provision either in 1996 Act or in any other statute from which it can be said that dispute concerning unregistered partnership deed cannot be referred to arbitration. We thus do not find any substance in the third submission of the appellant.

D

30. In the result, we do not find any merit in this appeal which is accordingly dismissed.