

J.P. ANAND
v.
D.G. BAFFNA

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OCTOBER 30, 2001

[SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

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Rent and eviction :

Delhi Rent Control Act, 1958 :

Ss. 25-B(5) and 14(1)(e)—Petition for eviction of tenant on ground of bona fide requirement—Summary trial—Application of tenant u/s 25B(5) seeking leave of court to contest eviction petition—Rent Controller dismissing application of tenant and ordering his eviction—Revision petition of tenant dismissed by High Court—Tenant contending that the grounds stated in affidavit accompanying his application, inter alia, denying relationship of “landlord and tenant” and bona fide requirement of landlord not considered by Rent Controller and High Court—Held, tenant’s claim that he had purchased the premises under an oral agreement, paid part consideration and was occupying premises as an owner was held by Rent Controller and High Court as unfounded—Besides, plea as such not raised before the said courts—On the other hand, a copy of agreement of tenancy available on record—As regards tenant opposing landlord’s ground of bona fide requirement, Rent Controller found that wife and married daughters of landlord merely applied to Delhi Development Authority for allotment of accommodation which did not amount to having alternative accommodation and the requirement of landlord was bona fide.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3201 of 1999.

From the Judgment and Order dated 5.2.99 of the Delhi High Court in C.R. No. 61 of 1999.

Rajiv Dutta, Ms. Erakshi Kulshrestha and Rakesh K. Sharma for the appellant.

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Ashok Kumar Chhabra and Ms. Madhu Moolchandani for the Respondent.

The following Order of the Court was delivered :

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A This appeal by special leave is from the judgment and order of the High Court of Delhi in Civil Revision No. 61 of 1999 dated February 5, 1999. The dispute in this appeal arises under Section 25B(5) of the Delhi Rent Control Act, 1958 (for short, 'the Act').

B The respondent filed eviction petition under Section 14(1)(e) of the Act in the court of Rent Controller, Delhi, stating that the appellant is the tenant of Flat No. 21-D, SFS, Motia Khan, New Delhi (for short, 'the premises') and he needed it for his *bona fide* personal occupation. On receipt of summons of the eviction petition, the appellant filed an application under Section 25B(5) of the Act seeking leave of the court to contest the eviction petition.

C On considering the material placed before it, the learned Additional Rent Controller dismissed the application of the appellant and ordered eviction of the appellant on August 19, 1998. The appellant unsuccessfully challenged that order in the High Court of Delhi by filing the revision, referred to above, which was dismissed by the impugned order on February 5, 1999. Thus, the appellant is in appeal in this Court.

D Mr. Rajiv Dutta, learned senior counsel for the appellant, contends that in the affidavit accompanying the application seeking leave to defend the eviction petition numerous grounds are taken but both the learned Additional Rent Controller as well as the High Court did not properly appreciate the ground that the appellant denied the relationship of 'landlord and tenant', between the parties, which if accepted would non-suit the respondent as such leave to defend ought to have been granted. Learned counsel for the respondent submits that the appellant's only claim before the court of the Rent Controller as well as the High Court was that he had purchased the premises and has been in its possession not as a tenant but as an owner thereof and that was found against the appellant. He did not urge specifically before the Rent Controller or before the High Court that the relationship of landlord and tenant did not exist between them as such that ground was not dealt with specifically by the courts.

G The point for consideration is : whether on true interpretation of sub-section (5) of Section 25B of the Act, the appellant has been illegally denied leave to defend the eviction petition filed by the respondent.

H Chapter III A was inserted in the Act by Act 18 of 1976 with effect from

December 1, 1975 which contains three sections. Section 25B, appears in that chapter and provides for summary trial of certain applications. We are concerned here with sub-sections (4) and (5) of the said provision, which read thus:

“25B. Special procedure for the disposal of applications for eviction on the ground of *bona fide* requirement.-

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the grounds aforesaid.

(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14A.”

A plain reading of the above provisions, shows that sub-section (4) precludes a tenant from contesting an eviction petition filed against him unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. It further provides that in default of the tenant's appearance in pursuance of the summons or his obtaining leave to contest the eviction petition, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction of the tenant on the ground mentioned in the eviction petition. Sub-section (5) obliges the Controller to grant leave to contest the eviction petition if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14 or under Section 14A. The facts disclosed in the affidavit should not be vague or imprecise, they should be clear and definite, and should *prima facie* make out the ground stated

A in support of the application seeking leave to contest the eviction petition.

B A perusal of clause (e) of sub-section (1) of Section 14 of the Act shows that it empowers the Controller to order recovery of possession of premises from the tenant by a landlord, if the premises let out for residential purposes are required *bona fide* by the landlord for occupation as a residence for himself, or for any member of his family dependant on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation. Admittedly the respondent's application seeking eviction of the appellant was filed under clause (e) of sub-section (1) of Section 14 of the Act.

C It would be appropriate to refer to the grounds stated in the affidavit accompanying the application filed by the appellant under Section 25B(5) of the Act. Grounds (l) and (m) are relevant for purposes of sub-section (5). They relate to – (1) denial of relationship of landlord and tenant, between the D respondent and the appellant and (2) the respondent having alternative accommodation : it is alleged that the wife and married daughters of the respondent applied to the Delhi Development Authority for allotment of accommodation in their favour.

E There can be no doubt that for entertaining a petition under Section 14 of the Act existence of relationship of landlord and tenant between the parties to the petition is a condition precedent. Though the respondent asserted existence of such a relationship, the appellant denied the same in ground (f). The denial of relationship is on the basis of the appellant's claim that he had purchased the premises under an oral agreement for sale and paid certain F amounts towards part consideration, and therefore he is occupying the premises as the owner and not as the tenant. Both the learned Additional Rent Controller and the learned Single Judge of the High Court found that the case set up by the appellant was unfounded. The learned counsel for the appellant disputed that the alleged agreement of tenancy between the parties was filed in the Court of the Additional Rent Controller. To verify this aspect, we called for the G original records. On perusal of the record it is noticed that along with the rejoinder a zerox copy of the agreement of tenancy was filed in the Court of the Additional Rent Controller. The main plea of denial of relationship of the landlord and the tenant is indeed a plea of the appellant asserting title to the H premises in himself and that was found against him. In the backdrop of the plea

of the appellant and the finding of the Rent Controller and the High Court, it cannot be contended legitimately that the learned Additional Rent Controller or the learned Single Judge of the High Court erred in not recording specific finding that the relationship of landlord and tenant existed between the parties, more so when the plea as such was not urged before the said courts.

The other ground that was urged to seek leave to contest the eviction petition is with regard to the *bona fide* requirement of the respondent for the reason that the wife and the married daughters of the respondent hold accommodation. The learned Additional Rent Controller found that the wife and the married daughters applied for allotment of accommodation to the Delhi Development Authority and that did not amount to having alternative accommodation and that the need of the respondent was *bona fide* and that he had no alternative accommodation. This finding of fact was not challenged in the High Court.

We are informed that the appellant has filed a suit for specific performance of contract for sale of the premises and that is pending before the Court of the District Judge, Delhi. We make it clear that the findings recorded by the learned Additional Rent Controller or High Court and any observation made by this Court shall not prejudice the rights and obligations of the parties in the suit which shall be decided by the learned District Judge, Delhi on its own merits uninfluenced by those proceedings.

In the result we find no substance in this appeal; the appeal is dismissed accordingly. There shall be no order as to costs.

R.P.

Appeal dismissed.

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SMT. KALPANA KOTHARI
v.
SMT. SUDHA YADAV AND ORS.

OCTOBER 31, 2001

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[S. RAJENDRA BABU AND DORAISWAMY RAJU, JJ.]

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Arbitration Act, 1940/Arbitration and Conciliation Act, 1996—Section 34/8—Suit for dissolution of partnership firm and rendition of accounts by one partner—Application under Section 34 of the 1940 Act for stay of proceedings filed by other partners before trial court—Application dismissed as not pressed in view of the repeal of the 1940 Act—Subsequently application filed before High Court under Section 8 of the 1996 Act also dismissed—On appeal, held, repeal of the 1940 Act and estoppel cannot constitute any legal impediment for having recourse to the remedies under the 1996 Act—Evidence Act, 1872—Section 115.

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Code of Civil Procedure, 1908—Order 40, Rule 1—Appointment of Receiver—Application filed by one of the partners for appointment of Receiver—Dismissed by trial Court but allowed by High Court—On appeal held, when an arbitration clause exists, having recourse to civil court for appointment of Receiver without making evident any intention to have recourse to arbitration in terms of the agreement cannot arise.

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Appellants and respondents entered into a partnership business. Due to misunderstanding between the parties, respondent filed a suit for dissolution of the partnership firm and rendition of accounts and also an application for appointment of a Receiver and for injunction. Appellants filed application under Section 34 of the Arbitration Act, 1940. Application filed by the respondent was dismissed. However, application filed by the appellant was allowed and proceedings in the suit was stayed. Respondent then filed an application for appointment of a Receiver before the High Court and the same was allowed. At the appellate stage, appellants filed a written application for dismissal of application under Section 34 as not pressed in view of the repeal of the 1940 Act and coming into force of the 1996 Act and got orders thereon. Thereafter, appellants filed an application under Section 8 of the 1996 Act for stay of proceedings

before High Court and the Trial Court. However, the application was dismissed. Hence the present appeal.

Allowing the appeal, the Court

HELD : 1. The High Court did not properly appreciate the relevant and respective scope, object and purpose as also the considerations necessary for dealing with and disposing of the respective applications envisaged under Section 34 of the 1940 Act and Section 8 of the 1996 Act. Section 34 of the Arbitration Act providing for filing an application to stay the legal proceedings instituted by any party to an arbitration agreement against any other party to such agreement, had nothing to do with actual reference to the arbitration of the disputes and that was left to be taken care of under Sections 8 and 20 of the 1940 Act. In striking contrast to the said scheme underlying the provisions of the 1940 Act, in the new 1996 Act, there is no provision corresponding to Section 34 of the old Act and Section 8 of the 1996 Act mandates that the Judicial Authority before which an action has been brought in respect of a matter, which is the subject-matter of an arbitration agreement, shall refer the parties to arbitration if a party to such an agreement applies not later than when submitting his first statement. The provisions of the 1996 Act do not envisage the specific obtaining of any stay as under the 1940 Act, for the reason that not only the direction to make reference is mandatory but notwithstanding the pendency of the proceedings before the Judicial Authority or the making of an application under Section 8(1) of the 1996 Act, the arbitration proceedings before the Judicial Authority or the making of an application under Section 8(1) of the 1996 Act, the arbitration proceedings are enabled, under Section 8(3) of the 1996 Act, to be commenced or continued and an arbitral award also made unhampered by such pendency. [605-B-H]

2. On the ground of estoppel and the conduct of the appellants in getting their earlier application made under Section 34 of the 1940 Act dismissed as not pressed that the applications under Section 8 of the 1996 Act were not countenanced by the High Court. The fact that the earlier application under the 1940 Act was got dismissed as not pressed in the teeth of the repeal of the said Act cannot, constitute any legal impediment for having recourse to and avail of the avenues thrown open to parties under the 1996 Act. Similarly, having regard to the distinct purposes,

A scope and subject of the respective provisions of law in these two Acts, the plea of estoppel can have no application to deprive the appellants of the legitimate right to invoke an all comprehensive provision of mandatory character like Section 8 of the 1996 Act to have the matter relating to the disputes referred to arbitration. [606-B-C]

B 3. The High Court did not take into account the overall necessity to balance the interests of both parties while appointing the Receiver and grant of injunction. The feasibility or otherwise of appointing Party receiver and allowing the partners to carry on the day-to-day activities of the business subject to strict and effective control and accountability to the Court of the realizing of the business was not considered at all before going out for the appointment of third party Receiver and prohibiting any sales, completely. As long as the Arbitration Clause exists, having recourse to Civil Court for adjudication of disputes envisaged to be resolved through arbitral process or getting any orders of the nature from Civil Court for appointment of receiver or prohibitory orders without evincing any intention to have recourse to arbitration in terms of the agreement may not arise. [606-D-H]

E CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7404-7406 of 2001.

From the Judgment and Order dated 18.1.2000 of the Rajasthan High Court in S.B.C.M.A. Nos. 251, 550, 635 of 1996.

WITH

F C.A. Nos. 7407-7409 of 2001.

G R.F. Nariman, Bhaskar P. Gupta, N.R. Choudhury, Prashant Kumar, Triveni Podekar, Ashok Sharma, N.S. Bisht, Somnath Mukherjee, N.S. Bisht, J.P. Pandey, Dr. P.C. Jain, Chanchal Kumar Ganguli (N.P.) N.S. Vashisht, Arun K. Sinha, Rakesh Singh and Rao Ranjit, for the appearing parties.

The Judgment of the Court was delivered by

RAJU, J. Special leave granted.

H Having regard to the nature of the orders under challenge and the stage

of the proceedings, we consider it inappropriate to refer to or delve in great detail with the allegations and claims on either side, in this judgment. But, it becomes necessary to deal with the background of the disputes between parties on a bird's eye view.

One Shri Laxmi Narain Yadav (since dead) was running a hotel business in tourist bungalow on Mirza Ismail Road at Jaipur, which belonged to him exclusively and absolutely. It was said to have been constructed on agricultural land without obtaining proper sanction and the proceedings were also said to have been initiated against him, in accordance with law. On 13.2.80, Laxmi Narain Yadav died leaving behind him a son Shri Vijay Krishna Yadav (a law graduate) and his wife Smt. Ashok Kumari and in a family settlement arrived at thereafter, the entire land and building admeasuring 5354 sq. yds. (4478 sq. meters) of the Tourist Hotel as such fell to the share of the son Shri Vijay Krishna Yadav. Thereafter, he made a notional division of the property into three shares measuring 1184 sq. meters, 1587 sq. meters and 1707 sq. meters in favour of himself, his wife Smt. Sudha Yadav and son Prashant Yadav. On 31.1.87, a partnership by name M/s Sumeru Enterprises was entered into between Shri Yadav, his wife, M/s Padmini Enterprises Private Ltd. and one Smt. Kalpana Kothari, besides admitting the minor Prashant Yadav to the benefits of partnership, with share in profits at 11%, 12%, 32.5%, 32.5% and 12% with shares in losses at 14%, 15%, 35.5%, 35.5% and nil respectively among them. The property of the Tourist Hotel was brought into as the stock of the Firm and valuing the same at 61% the respective shares was credited into the Capital Account of the Firm as Rs.17,00,000, Rs.22,00,000 and Rs.22,00,000 respectively in the names of Shri Yadav, his wife Smt. Sudha Yadav and their minor son Prashant Yadav. The rest of the capital was said to be required to be arranged by the other partners M/s Padmini Enterprises Pvt. Ltd. and Smt. Kalpana Kothari. For purposes of the partnership business, the land was got converted from agricultural use to commercial use on payment of the required conversion charges by the Firm and a registered lease-deed was entered into between the State represented by the Governor of Rajasthan and the Firm M/s Sumeru Enterprises on 3.3.89. The building plans were said to have been got approved from the Jaipur Development Authority in July 1991 and thereafter on 5.10.91, all the partners of M/s Sumeru Enterprises seem to have entered into an agreement with M/s Parasnath Builders Pvt. Ltd., as per the terms of which, among other things, the builders were appointed as Agent and Manager, not only to execute the constructions but also to enter into negotia-

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A tions for sale of the apartments (shops, offices, etc.) on such terms and conditions and at such rate or prices as prevalent in the market with the intending purchasers. All the partners also were said to have executed a Power of Attorney dated 2.11.91 duly registered in favour of M/s Parasnath Builders Pvt. Ltd.

B While matters stood thus, Shri Vijay Krishna Yadav also expired on 23.12.91 leaving behind a Will dated 16.12.91 as to the mode of succession and an order of Letters of Administration dated 13.9.93 was said to have been obtained from the District Judge, Jaipur City, on the basis of the Will dated 16.12.91. A sum of Rs.2.50 lakhs each was to be and has been given to each
C one of the daughters, Preeti Yadav and Mamta Yadav, and the shares in the Partnership in question of late Shri Yadav had been divided equally between his wife and son resulting in modification and due alteration and adjustment of shares in the property of the Firm so far as Smt. Sudha Yadav and Prashant
D Yadav holding 17.5% with share in loss of Smt. Yadav at 29% both of hers and of her late husband, put together. After obtaining Letters of Administration, Smt. Sudha Yadav was said to have written two Letters dated 7.10.93 and 31.1.94 approving and confirming the accounts of the Firm. It was also claimed for the appellants that withdrawals by crossed cheque payments came to be made from the Firm on account of late Shri Yadav at Rs.10,14,203
E (including the payment of Rs.5 lakhs as per direction in the Will and Letters of Administration), of Smt. Yadav at Rs.20,03,432 and of Master Prashant Yadav at Rs.10,03,432 (in all Rs.40,21,067 from the funds of the Firm). After all these, a sum of Rs.6,82,650.52 (Rs.3,41,325.26 each) was said to be lying to the credit of Smt. Yadav and Master Prashant Yadav in the accounts of the
F Firm. The further claim of the appellants seems to be that on effecting sales of some of the apartments, the profits earned were also distributed among the partners by proper credit entries of Rs.5,96,829.30 each in favour of Smt. Yadav and Prashant Yadav and Rs.11,08,397.28 each in favour of Smt. Kalpana Kothari and M/s Padmini Enterprises Pvt. Ltd. It is also claimed that till
G October 1995, a total number of 173 offices and shops came to be disposed of and of which possession in respect of 154 were also said to have been delivered to the buyers and several crores of rupees were ploughed into for executing the construction works.

H Misunderstanding seems to have surfaced among parties resulting in the

issue of a notice dated 1.2.95 by Smt. Yadav making serious allegations of malpractices and irregularities against others in the Firm followed by a suit for dissolution of the Partnership Firm through Court under Section 44 (g) of the Partnership Act, and for rendition of accounts, filed on 17.10.1995. In the meantime, through one Shri Yadvendra Singh (the real brother of Smt. Yadav) the minor Prashant Yadav also seems to have filed a suit on 30.3.1995, which came to be withdrawn subsequently and followed by a fresh suit in September 1995, staking a claim for the entire property left behind by late Shri Laxmi Narian Yadav, as his own. It is stated that in this suit Smt. Yadav has been made a party defendant as she had made Prashant Yadav as party defendant also in her suit.

Smt. Yadav, in her suit, has filed an application for the appointment of a Receiver as also an application for injunction. M/s Parasnath Builders Pvt. Ltd. as well as Smt. Kalpana Kothari filed applications under Section 34 of the Arbitration Act, 1940, in the Trial Court, relying upon the arbitration clauses contained in the Partnership Deed dated 31.1.87 and the agreement dated 5.10.1991 entered into by the Firm with the Builders. The applications filed for appointment of Receiver and also the one for injunction also were opposed by these defendants in the suit. On a consideration of the materials on record and also the respective contentions of parties, by an order dated 6.2.96, the applications for injunction as also for the appointment of Receiver were rejected by the Trial Court. Similarly, the suit was also stayed by allowing the applications filed under Section 34 of the Arbitration Act, 1940. Aggrieved, Smt. Sudha Yadav has filed before the High Court S.B. Civil Misc. Appeal No.251 of 1996 against the order dismissing the application for appointment of a Receiver made under Order 40 Rule 1, CPC, S.B. Civil Misc. Appeal Nos.550 of 1996 and 635 of 1996 (defect) against the orders passed on the respective applications filed under Section 34 of the Arbitration Act, 1940. On 27.8.99, the defendants, who filed applications before the Trial Court under Section 34 of the Arbitration Act, 1940, moved applications in writing before the High Court stating that they do not press their applications under Section 34 of the Arbitration Act, 1940, in view of the repeal of the 1940 Act and for their dismissal as not pressed and consequently, the same was allowed on 7.10.99. The minor Prashant Yadav was also said to have attained majority on 21.9.97. But, subsequently in about two months time the very same defendants (respondents 1 & 2 before High Court) filed an application on 26.10.99 under Section 8 (1) of the Arbitration and Conciliation Act, 1996,

A with a prayer that the proceedings before the Trial Court be stayed without prejudice to the rights under Section 8(3) of 1996 Act, till the commencement/continuation of the arbitration proceedings and making of the Arbitrators award. A learned Single Judge of the Rajasthan High Court at Jaipur by the order dated 18.1.2000, under challenge in these appeals, set aside the orders
B of the Trial Court dated 6.2.96, and held as follows:

(a) The balance of convenience is in favour of appointment of a Receiver for preserving as well as managing the property to save it from any anticipated loss till the decision of the suit;

C (b) that having got the application earlier filed before the trial court under Section 34 of the Arbitration Act, 1940 which was in force at the time of filing of the suit dismissed as withdrawn, it is not permissible to invoke the powers under Section 8 of the Arbitration and Conciliation Act, 1996 to obtain the relief of stay of further proceedings;
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(c) that by their conduct as above they are estopped from filing a fresh application.

Heard Sarva Shri R.F. Nariman and Bhaskar P. Gupta, Senior Advocates,
E for the appellants and Dr. P.C. Jain, Advocate, for the respondent-plaintiff. The learned counsel appearing on either side vehemently tried to project the claims of the respective parties both on grounds pertaining to legal issues and relevant facts. On a careful consideration for the same and the reasons assigned by the learned Judge in the High Court, we find it difficult to affix our approval to the order under challenge.
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The first respondent herein has filed the civil suit for dissolution of the partnership and for accounts and also filed applications for the appointment of Receiver and for injunction. The defendants have initially filed applications in the suit before the Trial Court invoking the provisions contained in Section
G 34 of the Arbitration Act, 1940 and not only the applications filed by the first respondent before the Trial Court were rejected but the applications under Section 34 of the Arbitration Act by the appellants came to be allowed and further proceedings in the suit filed by the first respondent came to be stayed. No doubt, at the appellate stage, after filing a written application for dismissal
H of the applications filed by the appellants under Section 34 of the Arbitration

Act, 1940, as not pressed in view of the repeal of the 1940 Act and coming into force of the 1996 Act and getting orders thereon, the appellants herein have once again moved the High Court under Section 8 of the Act, with a request for stay of proceedings before the High Court as well as the Trial Court, but the application came to be rejected by the learned Judge in the High Court that no such application could be filed, once the application earlier filed under 1940 Act was got dismissed as not pressed and also on the ground of estoppel, based on the very fact. We are of the view that the High Court did not properly appreciate the relevant and respective scope, object and purpose as also the considerations necessary for dealing with and disposing of the respective applications envisaged under Section 34 of the 1940 Act and Section 8 of the 1996 Act. Section 34 of the 1940 Act provided for filing an application to stay legal proceedings instituted by any party to an arbitration agreement against any other party to such agreement, in derogation of the arbitration clause and attempts for settlement of disputes otherwise than in accordance with the arbitration clause by substantiating the existence of an arbitration clause and the judicial authority concerned may stay such proceedings on being satisfied that there is no sufficient reason as to why the matter should not be referred to for decision in accordance with the arbitration agreement, and that the applicant seeking for stay was at the time when the proceedings were commenced and still remained ready and willing to do all things necessary to the proper conduct of the arbitration. This provision under the 1940 Act had nothing to do with actual reference to the arbitration of the disputes and that was left to be taken care of under Sections 8 and 20 of the 1940 Act. In striking contrast to the said scheme underlying the provisions of the 1940 Act, in the new 1996 Act, there is no provision corresponding to Section 34 of the old Act and Section 8 of the 1996 Act mandates that the Judicial Authority before which an action has been brought in respect of a matter, which is the subject-matter of an arbitration agreement, shall refer the parties to arbitration if a party to such an agreement applies not later than when submitting his first statement. The provisions of the 1996 Act do not envisage the specific obtaining of any stay as under the 1940 Act, for the reason that not only the direction to make reference is mandatory but notwithstanding the pendency of the proceedings before the Judicial Authority or the making of an application under Section 8(1) of the 1996 Act, the arbitration proceedings are enabled, under Section 8(3) of the 1996 Act to be commenced or continued and an arbitral award also made unhampered by such pendency. We have to test the order under appeal

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A on this basis.

B On the ground of estoppel and the conduct of the appellants in getting their earlier application made under Section 34 of the 1940 Act dismissed as not pressed that the applications under Section 8 of the 1996 Act were not countenanced by the High Court. The fact that the earlier application under the 1940 Act was got dismissed as not pressed in the teeth of the repeal of the said Act cannot, in our view, constitute any legal impediment for having recourse to and avail of the avenues thrown open to parties under the 1996 Act. Similarly, having regard to the distinct purposes, scope and object of the respective provisions of law in these two Acts, the plea of estoppel can have no application to deprive the appellants of the legitimate right to invoke an all comprehensive provision of mandatory character like Section 8 of the 1996 Act to have the matter relating to the disputes referred to arbitration, in terms of the arbitration agreement.

D So far as the need for or desirability of appointing the Receiver and granting of injunction, as prayed for, is concerned, the High Court does not seem to have taken into account the overall necessity to balance the interests of both parties. Since only the land has been said to have been brought into the partnership assets by the Plaintiff's husband with no other contribution of any further funds, that the land was got legally converted into one fit for commercial purposes of the Firm and the constructions were stated to have been put up only with the funds of the other partners or the builders, as the case may be, and the serious difficulties and loss to which the Firm and partners may be put into by freezing the day-to-day business activities of the Firm and the adverse impact on the credibility and reputation of the Firm, as a whole, do not seem to have engaged the attention of the High Court in passing the orders under challenge. The feasibility or otherwise of appointing Party Receiver and allowing them to carry on the day-to-day activities of the business subject to strict and effective control and accountability to the Court of the realizing of the business does not seem to have been considered at all before going out for the appointment of a third party Receiver and prohibiting any sales, completely. As long as the Arbitration clause exists, having recourse to Civil Court for adjudication of disputes envisaged to be resolved through arbitral process or getting any orders of the nature from Civil Court for appointment of Receiver or prohibitory orders without evincing any intention to have recourse to arbitration in terms of the agreement, may not arise.

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For all the reasons stated supra, we set aside the orders of the High Court as also that of the Trial Court and remit the proceedings to the Trial Court which shall consider the matter afresh in the light of the claims and rights of the respective parties under the Arbitration and Conciliation Act, 1996 and pass such orders as it deem fit in accordance with law. Both parties are at liberty to move all or any applications for the purpose before the Trial Court. Though, we set aside the order of the High Court to facilitate the Trial Court to deal with the matter afresh, the *status quo* as brought about by the orders of the High Court shall continue till the Trial Court chooses to make its own orders or directions in this regard, uninfluenced by the earlier orders of its own or that of the High Court.

The appeals are allowed on the above terms with no order as to costs.

N.J.

Appeals allowed.