IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)
Present
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan

First Appeal No. 17 of 2010

IN THE MATTER OF:
Mrs. Shuhada Banu and another
... Plaintiff-Appellants
-Versus-
Shahida Akhter and others
... Defendant-Respondents
Mr. M.A. Azim Khair, Advocate
... For the Plaintiff-Appellants
Mr. Probir Neogi with
Mr. Md. Sumon Ali and
Mr. Joydeepta Deb Choudhury, Advocates
... For the Defendant-Respondent Nos.1 & 2
Judgment on: 17.07.2025

Md. Riaz Uddin Khan, J:

This appeal is directed against the judgment and decree dated 04.08.2009 (decree signed on 04.08.2009) passed by the Joint District Judge, 7th Court, Dhaka in Title Suit No. 4239 of 2008, (arising out of Title Suit No.144 of 2001) dismissing the suit.

Facts for disposal of this first appeal is that the appellants instituted Title Suit No.144 of 2001 before the Joint District Judge, 3rd Court, Dhaka impleading the respondents as defendants for certain daclarations, rendition of accounts, compensation and also for injunction as described in the plaint.

The suit was filed by the plaintiffs contending *inter alia* that University Research Corporation (Bangladesh), hereinafter referred to as ("URCB"), was registered as a partnership firm; three persons namely Mrs. Shuhada Banu, plaintiff No. 1 having 50% share, Mrs. Sayeeda Begum and

Mrs. Roxana Parveen having 25% share each and accordingly a Deed of Partnership dated 01.10.1989, setting out the terms and conditions therein was executed. It was agreed that the partnerships firm shall act as management, financial consultants and researchers and to undertake research and socio-economic surveys for and on behalf of the local and foreign organizations, provide financial and management consultancy services to Government bodies and non-Government organizations. Professor Barkat-e-Khuda husband of plaintiff No.1, from the very inception of the partnership business had been Advisor of URCB until 30.04.1994. As Advisor, Professor Barkat-e-Khuda was looking after the administration and financial aspect of the partnership business. Plaintiff No.1 and her husband engaged Defendant No.2, Dr. Abul Barkat in URCB projects. One of the aforesaid partners Mrs. Roxana Parveen voluntarily retired from URCB with effect from 31.12.1990. The remaining partners of the partnership firm, namely, the plaintiff No.1 and the aforesaid Mrs. Sayeeda Begum in a meeting held on 01.01.1991 invited defendant No.1 to join as a partner in URCB with effect from 01.01.1991 agreeing upon an entitlement to the profit/loss of the firm in the following proportions: Mrs. Shuhada Banu 50%, Mrs. Sayeeda Begum 25% and Mrs. Shahida Akhter 25%. Thereafter, the aforesaid Mrs. Sayeeda Begum voluntarily retired from the partnership firm with effect from 30.11.1991. After such voluntary retirement of Mrs. Sayeeda Begum, the profit/loss ratio of the plaintiff No.1 and the defendant No.1 stands as 65% and 35% respectively. The defendant No.2, being husband of defendant No.1 having gained confidence of plaintiff No. 1 was entrusted with looking after the administration and management of the partnership business,

plaintiff No. 1 surrendered 10% of her profits of the business in favour of defendant No. 1 and changed the profit sharing ratio without, however, affecting the previously agreed ownership percentage of the partnership business. The partners at a meeting held on 01.07.1996 decided that the new ratio will be implemented from July 1995 until Dr. Barkat-e-Khuda returns back to URCB. Since 1.5.1994, defendant No. 2 has been looking after the administration and financial affairs of the partnership business working as Advisor, URCB. Since 1.7.1998, defendant No. 2 has been carrying the partnership business single-handedly, unilaterally, wantonly, arbitrarily, without lawful authority and has failed and/or neglected to give proper accounts of the partnership business to the partners of URCB, despite several requests in the regard.

It is further stated in the plaint that to promote the business of the partnership senior consultants who had been working for the partnership business were given a stake in the partnership through their wives. By reducing the plaintiff No.1's shares by 10% and defendant No.1's share by 5% by the partners at a meeting held on 20.02.1999 inviting 3 new partners as a mark of recognition of long association and continuous involvement of such senior consultants. Accordingly, (1) Mrs. Begum Bilkis Akhter, wife of Dr. M. A. Mannan, a senior consultant of URCB (2) Mrs. Sayeeda Khan, wife of Dr. Azizur Rahman, a senior consultant of URCB and (3) Mrs. Chandra Batabyal, wife of Dr. Sushil Ranjan Howlader, a senior consultant became partners of URCB and was decided that the share of the partnership business will be as follows: 1. Mrs. Shuhada Banu 55% 2. Mrs. Shahida Akhter 30% 3. Mrs. Begum Bilkis Akhter 5% 4. Mrs. Sayeeda Khan 5% and 5. Mrs. Chandra

Batabyal 5%. Thereafter, at a meeting dated 1.5.1999 some decisions were taken unanimously and pursuant to aforesaid decisions of the partners meeting held on 1.5.1999, Professor M.A. Mannan, Chief Coordinator of URCB wrote letter dated 4.5.1999 to defendant No. 2, wherein he was requested to remain present in the office on 6.5.1999 between 16.00 hours and 18:00 hours to hand over all papers and documents to the present management, failing which he will be held responsible for any loss and damage to the property of URCB that may be detected. Defendant No. 2 refused to abide by the decision of the partners. Instead, defendant No. 2 caused the Office Secretary of URCB and also his wife, defendant No. 1 to issue letters, disputing and/or calling in question the aforesaid decision of the partners of URCB. Bank Accounts of URCB were also stopped at the instance of defendant No. 2. GD Entry was also filed on 6.5.1999. Confusing letters were sent out by defendant No. 2 addressed to various organizations causing damage, injury and loss of reputation of URCB and its partners. Defendant No. 2 addressed letter dated 4.5.1999 to the plaintiff No. 1 informing her that he received a letter signed by Professor M. A. Mannan dated May 04, 1999 together with a copy of the Partners Meeting. Defendant No. 2 in the said letter termed the husbands of the three new partners to be "strangers" and informed the plaintiff No. 1 that the question of handing over the organizational matters to a stranger does not arise alleging the Partners Meeting of 1.5.1999 to be totally illegal and uncalled for, and termed the other partners as strangers.

Further case of the plaintiffs is that defendant No.1, being ill-advised by defendant No. 2, served a legal notice upon the plaintiff No. 1 on 27.5.1999, notifying

appointment of her Arbitrator and requesting plaintiff No. 1 to appoint an Arbitrator to settle the alleged dispute. Accordigly the appointed Arbitrators, namely, (1) Mr. Fida M. Kamal, and (2) Mr. Abdul Quayum, both Advocates, Supreme Court of Bangladesh, entered into arbitration on 1.7.1999 when the plaintiff No. 1 and the defendant No. 1 appeared before the learned Arbitrators. In the arbitration proceedings the plaintiff No. 1 and the defendant No. 1 submitted their respective statements of claims giving details of their respective case and the defendant No. 1 made a prayer for winding up the firm and claimed her alleged share. After several sittings/sessions the learned Arbitrators by Order No. 4 dated 23.9.1999 appointed a Chartered Accountants firm to look into the financial and/or other papers and affairs of the business of URCB and submit their Audit Report. However, the learned Arbitrators vide Order No.7 dated 2.12.1999, ordered the Auditors to submit the Audit Report within the next 7 days and the parties to collect copy of the Audit Report before 16.12.1999. On the basis of a joint prayer of the parties, the statutory time limit was extended upto 31.12.1999 to complete the arbitration proceeding, fixing 16.12.1999 as the next date. The Audit Firm submitted its Audit Report. On 16.12.1999 the plaintiff No.1 appeared through her learned Advocate, but none appeared on behalf of the defendant No.1 before the learned Arbitrators.

It is further stated in the plaint that because of the profitability of the partnership business Of URCB, defendant No. 2 has recently started a new organization in the name and style of Human Development Research Corporation (HDRC) and defendant No. 2 has diverted many of the clients of the partnership business of URCB, setting up

a parallel organization, carrying on identical business, causing loss and injury to the partnership business of URCB. The plaintiff and other partners are ready and willing to carry on the partnership business with defendant No. 1, but excluding interference from defendant No. 2 or without defendant No. 1, should she decide to retire from the partnerships business. Defendant No. 2, in any case, should be called upon to answer for the misdeeds committed against the partnership business. Due to the misappropriation of the assets of the partnership firm and mismanagement of the partnership firm by the defendant Nos. 1 and 2, it has become difficult for the plaintiffs to carry on the partnership business with the defendant No.1, as the plaintiffs have suffered loss of faith, confidence and trust on the defendant Nos. 1 and 2, although they are still willing to carry on business with defendant No. 1 excluding interference from defendant No. 2. The defendant No. 1, being under the evil influence of defendant No. 2, is presently on unfriendly terms with the plaintiffs and is bent upon creating troubles to the plaintiffs and URCB. Defendant Nos. 1 and 2 have now assumed a threatening attitude towards the plaintiff No. 1. Defendant No. 2 still occupy the office premises of URCB illegally and continues to use the staff of URCB for unauthorized activity for which only defendant Nos. 1 and 2 are responsible and accountable. All the assets, viz. computers, records therein and office records, bank accounts and other valuables situated at URCB office and elsewhere, belong to URCB. For the irregularities/misconducts of defendant No. 2 in collusion with defendant No. 1, the plaintiffs have suffered loss and injury provisionally, estimated at Tk. 80 lacs. The cause of action of the suit arose at Dhanmondi,

Dhaka on 01.05.1999 when the meeting of the partnership firm took the decision to implement collective management and thereafter on the dates mentioned above and continues to date of filing of the suit. Hence the suit.

The plaintiff filed the suit on the following prayer:

that a decree be passed declaring that proforma defendant Nos. 3, 4 and 5 are also partners of University Research Corporation (Bangladesh);

that the plaintiff No. 1 and proforma defendants Nos. 3, 4 and 5 are entitled to a rendition of a true and complete accounts of University Research Corporation (Bangladesh) from the defendant Nos. 1 and 2 for the period from 01.07.1998 till such time as he delivers possession of the partnership property and business in favour of the plaintiffs, as may be directed by the Court;

that all actions taken by defendant No. 2, after 01.5.1999, including all expenses incurred by him, be declared illegal and not binding on the partnership firm, plaintiff No. 2;

that an order be passed directing defendant No. 1 and 2 to account for all the business that they have transferred from University Research Corporation (Bangladesh) and are seeking to carry on in the name of Human Development Resource Corporation (HDRC) at House No. 38, Road No. 9A, Dhanmondi Residential Area, Police Station-Dhanmondi, District-Dhaka;

that an order for payment of all sums found due from the defendants to the plaintiffs, with interest @ 18%, upon taking such account together with the money received by the defendant's new firm, namely the aforesaid HDRC;

that the defendant be restrained by an order of permanent injunction from carrying on with the business of similar nature from the same area and passing it off by using the staff, facilities, office equipment/ accessories of URCB;

that an order of making good for the loss, damage and injury caused to the business and reputation of URCB, as may be directed by the Court.

Alternatively, direct the defendant No. 1 to abide by the unanimous decision of the partners meeting held on 01.5.1999 and/or direct the defendant No. 1 and her husband not to cause any loss, damage or harm to URCB and/or not to interfere in the business of URCB contrary to the decision of the partners of URCB and/or alternatively, direct the defendant No. 1 to retire form the partnership business and/or pass such other order or orders as may be deemed fit and proper.

Costs of the suit in favour of the plaintiffs and against the defendants;

that any other further relief or reliefs as the plaintiff are found entitled in law and

equity and such other relief/reliefs as may seem fit and proper, having regard to the facts and circumstances of the case as stated above or further order/orders which the court deems fit and proper may be passed;

Defendant Nos.1 and 2 contested the suit by filing written statement denying all the material allegations made in the plaint. In their facts of the case it is stated *inter alia* that Mrs. Shuhada Banu, Mrs. Sayeeda Begum and Mrs. Roxana Parveen started a partnership business in the name and style of University Research Corporation (Bangladesh) in October 01, 1989 and considering the educational qualification and experience of the husband of defendant No.1, Dr. Abul Barkat (defendant no.2) the plaintiffs invited him to work as consultant of the said URCB. Thereafter, URCB has earned a very good reputation due to the hard work and professional experience of Dr. Abul Barkat, both nationally and internationally. At one stage plaintiff No. 1 in association with her husband Dr. Barkat-E-Khuda, in order to achieve illegal gains, managed to oust Mrs. Roxana Parveen from the joint business. Thereafter, looking at the efficiency, professional experience and reputation of defendant No. 2, the plaintiffs offered the defendant No. 1 to become a partner of the said business. After re-constitution of the firm an amount Tk. 3,00,000.00 (three lac) was contributed equally by three new partners, namely Mrs. Shuhada Banu, Mrs. Sayeeda Begum and the defendant No. 1 having 50% and 25% share respectively. Defendant No. 2 Professor Abul Barkat, who was subsequently adopted as Advisor of the firm, invested his valuable labour to earn reputation of URCB. As

a result of that the URCB earned very wide reputation in various organizations, namely, World Bank, USAID, UNFPA, UNICEF, The Population Council, The Futures Group International (USA), Planned Parenthood Federation (IPPF), FPAB, PRIP Trust, ALRD and other organizations, as well as among the relevant professionals, both nationally and internationally. When the business was running smoothly then plaintiff No. 1, in connivance with her husband Dr. Barkat-E-Khuda, started to implement her evil design to remove the second partner of the firm namely Mrs. Sayeeda Begum raising some baseless allegations against her husband Mr. G.M. Khan who was a knowledgeable person in the administration and as part of her evil design got rid of Sayeeda Begum from the business. Thereafter, a supplementary deed was executed in between the plaintiff No.1 and defendant No. 1, allotting 65% and 35% share respectively. After about two and half years of the said deed, that is, in 1994 Dr. Barkat-E-Khuda left URCB and joined the ICDDRB getting a very high salary as Project Director without bothering about the fate of the URCB inasmuch as URCB was at her infant stage at the relevant time and the whole affairs of this infant URCB was handed over to Dr. Abul Barkat (defendant No.2) who at the relevant time was Advisor of URCB. At that time defendant No. 2, expressed his concern to Dr. Barkat-E-Khuda about the smooth functioning and development of URCB when he promised that he would devote his weekly holidays for URCB. But in fact Dr. Barkat-E-Khuda did nothing for URCB rather he enjoyed the fruits of the business using the office car and office staff for family purpose. He also took away many books, journals, copies of reports from URCB and he never returned those properties of the firm.

The further case of the defendants is that in between 1994 and 1996, i.e. after Dr. Khuda left URCB, the URCB started to gain momentum in terms of its business expansion due to the hard work of defendant No. 2, Dr. Abul Barkat. Thereafter, in July, 1996 the profit sharing was changed and it was agreed in a resolution that the sharing ratio would be 55% for plaintiff No.1 and 45% for defendant No.1 and it was then decided that the said change would remain valid until Dr. Barkat-E-Khuda returns back to URCB but he did never return. Since 1996 plaintiff No. 1 and her husband Dr. Barkat-E-Khuda did many acts against Dr. Abul Barkat and in effect against the reputation of URCB affecting the mutual trust severely. On 22nd February, 1999 at a hartal day, Dr. Khuda called defendant No. 2 over telephone to meet and talk to him face to face. When he met him at URCB office, three persons namely Professor Azizur Rahman, Professor M. A. Mannan and Professor Sushil Ranjan Hawlader appeared there. Then, Dr. Barkat-E-Khuda along with those three persons started putting pressure by exercising coercive force upon the defendant No.2 to support their design to start business unethically. At one stage Dr. Khuda went out of the room and gave an envelope containing a typed paper and directed one Abu Taleb, a staff of URCB to take signature of the defendant No.1 on the same. They disconnected the telephone and Dr. Khuda told Abu Taleb to tell the defendant No.1 that Dr. Abul Barkat had sent him to obtain the signature of defendant No.1 on the said paper. The said Abu Taleb came to the residence of defendant No.1 and asked her to put her signature stating that Dr. Abul Barkat sent the same for her signature. Then the defendant No.1 put her signature without reading the said paper in good faith. Therefore,

defendant No.1 came to know from defendant No.2 that in connivance with those three persons the plaintiff No.1 managed to change shares. It is to be mentioned here that in order to change the shares no meeting was held, no notice was issued and no resolution was taken and that has been done by practicing fraud upon defendant No.1 as well as upon the defendant No. 2. It is apparent from the said paper itself. From the aforesaid activities the defendants became sure that the plaintiff No. 1 & her husband have taken decision and made a conspiracy to kick out the defendants 1 & 2 from URCB in collusion with aforesaid persons in the same way as she did previously in case of Mrs. Saheeda Begum and Mrs. Roxana Parveen. plaintiff Nos. 1 & her husband in the aforesaid collusive manner, acquired illegal powers as signatories to operate bank transactions and sent a letter signed by plaintiff No. 1 and three others addressed to the Manager, ANZ Grindlays Bank, Dhanmondi Branch, Dhaka, about the change in bank operation of firm's accounts stating that in place of Professor Abul Barkat (Advisor, URCB and signatory to all bank related matters since 1991) the name of Professor M.A. Mannan to be substituted. Thereafter without issuing any notice and without informing the defendant No. 1, the plaintiff No. 1 in collusion with others most illegally appointed Professor M.A. Mannan as Chief Coordinator of URCB and the defendant No.2 who is the advisor of URCB received a letter issued under the signature of Professor M.A. Mannan wherein defendant No.2 was asked to handover the charge of administration and project-related matters to Professor M.A. Mannan and financial, accounts and asset-related matters to Professor Azizur Rahman within 06.05.1999.

The defendants' further case is that as a part of the malafide action of the plaintiff No.1 against URCB the so-called Chief Coordinator Professor M.A. Mannan has been using substitute duplicate pad using the name of URCB and did other works most illegally and malafide which were against the interest of defendant No.1. That in view of the aforesaid facts and circumstances of the matter it has become difficult on the part of the defendants to run the firm with the plaintiff No.1. As such the defendant No. 1 had no other alternative but to pray for winding up the firm and to dispose of the properties/assets of the firm alongwith the goodwill, and liabilities and the defendants prayed for dismissing the suit with cost.

In order to prove their respective cases the plaintiffs adduced 5 witnesses and produced documents which are marked as Exhibits-1 to 13 and X, X-1 to X-5 while the defendants adduced 3 witness and produced document which was marked as Exhibit-Ka. After hearing both the parties and considering the evidence on record the learned Joint District Judge, 7th Court, Dhaka was pleased to dismiss the suit by the impugned judgment and decree.

Being aggrieved by and dissatisfied with the aforesaid judgment and decree the plaintiffs preferred this appeal.

Mr. M.A. Azim Khair, the learned advocate appearing for the plaintiff-appellants submits that in view of the pleadings of the parties, the vital issue, as emphasized by the trial court, as to holding of meeting dated 20.02.1999 is legal or not and arrived at a wrong finding that the plaintiffs failed to prove the presence of defendant nos.1 and 2 in the meeting. He submits that the facts as to introduction of new partners and holding of meeting dated 20.02.1999 have been stated in paragraph nos. 10 & 11 of

the plaint against which the defendants gave reply in paragraph nos. 23 & 24 of their written statements wherein stated that the statement of paragraph no. 11 not fully correct. According to him such evasive reply attracts the provisions of Rule- 3 & 5 of Order- VIII of Code of Civil Procedure and thereby deemed to be admitted.

The learned advocate then submits that the resolution dated 20.02.1999 was filed and marked as Exhibit-X which was confronted to the DW-1 who admitted the signature appears in the said resolution as the signature of Defendant No.1, Sahida Akter by saying প্রদর্শণী-X-এ আমার স্ত্রীর স্বাক্ষর আছে। ইহাই আমার স্ত্রীর স্বাক্ষর উহাতে ২০/০২/১৯৯৯ইং লেখা আছে। তারিখটি শনিবার প্রদর্শণী-X অনুযায়ী নতুন তিনজন অংশীদারকে যারা মোকাবেলা বিবাদী নং-৩-৫ গণ এর অনুকুলে ৫ % হারে শেয়ার বরাদ্দ করা হয়। in view of such admission of the signature appears in the resolution dated 20.02.1999 proves contents thereof. Although in the written statement fact stated as defense case, an alternative case was made out to the effect that the signature of the defendant no.1 was obtained in a paper which was subsequently managed to change the shares but the defendants not only failed to prove the said fact by adducing any documentary evidence or by leading any independent oral evidence but the said fact is afterthought which is evident from the evidence on record. Both defendant nos. 1 & 2 respectively wrote two letters to plaintiff no. 1 on 04.05.1999 (Exhibit-7 & 8) in reply to letter dated 04.05.1999 issued by M. A. Mannan with a copy of the resolution of meeting on 01.05.1999 wherein the defendants did neither raised any objection as to the resolution dated 20.02.1999 nor stated that the signature of defendant no. 1 appears in Exhibit-X was fraudulently obtained. For the first time in the legal notice of arbitration dated 27.05.1999, the Defendants made out the

case as to obtaining signature in resolution by fraudulent means which is nothing but innovation of the lawyer. If the resolution dated 20.02.1999 was fraudulently obtained the defendants should have lodged an FIR.

The learned advocate extraneously submits that there is no dispute as to the principle that the plaintiff is to prove his own case and cannot take advantage of the weakness of defense case but the said principle is not applicable in the facts and circumstances of the present case inasmuch as to prove consent of the defendant no.1 for the purpose of introduction of new partners, the plaintiff submitted and proved resolution dated 20.02.1999 wherein the defendant no.1 puts her signature; the defendants admitted the signature appears in the said resolution but made out an alternative case of fraud in obtaining the same. In that view of the matter, according to the learned advocate, the onus shifts upon the defendants to prove their case of obtaining the signature fraudulently. In support of his submission the learned advocate cited three decisions reported in BCR 1984 (AD) 127, 6 ADC 901 and 42 DLR 344.

The learned advocate further submits that due to the absence and non-co-operation of the defendants the arbitration proceeding could not be proceeded with and the PW-2 categorically made statement to that effect in his cross-examination "অডিট রিপোর্টে বেশকিছু অনিয়ম দুর্নীতি চিহ্নিত হয়। যদিও ১/২নং বিবাদী আরবিট্রেশন শুরু করে কিন্তু অডিট রিপোর্টে ১/২নং বিবাদীর বিরুদ্ধে অডিট অনিয়ম ধরা পড়ায় তাহারা আরবিট্রেশনে অংশ গ্রহণ করা থেকে বিরত থাকেন। ফলে আরবিট্রেশন অগ্রসর হতে পারে নাই। ফলে পরবর্তীতে আরবিট্রেশন সম্পূর্ণ বন্ধ হয়ে যায়।" According to the learned advocate in view of such evidence the finding of the trial court that during pendency of arbitration proceeding the suit is not maintainable is not correct. Moreover, on the basis of

joint prayer of the parties the statutory time limit was extended up to 31.12.1999 to complete the arbitration proceedings and due to the absence of the defendant no. 1, who was First Party in the said proceeding, the arbitration proceeding could not be concluded and therefore, after expiry of 31.12.1999 the arbitration proceedings deemed to have terminated as contemplated by the provision of Section 3 read with Clause 3 of First Schedule of the Arbitration Act, 1940 and any award made after expiry of the 4 months would render the award illegal and without jurisdiction. In support of his submission the learned advocate cited a decision reported in 6 DLR 641.

Mr. Khair lastly subits that since the vital point for determination was decided by the trial court erroneously the impugned judgment is illegal and therefore the judgment and decree is liable to be set aside.

Per-contra, Mr. Probir Neogi with Mr. Md. Sumon Ali, the learned advocate for the defendant-respondents submits that it is admitted by the parties that the profit sharing ratio initially for plaintiff no.1 was 65% and defendant No.1 was 35%. Thereafter, it was changed in the meeting held on 01.07.1996 and fixed 55% for the plaintiff and 45% for the defendant. But the plaintiff claimed that she gave up 10% share out of 65% and defendant gave up 5% share out of 35% and included 3 new partners by allotting 5% share each, which is ultimately reduced from the share of the defendant No.1 and nothing in the plaint stated that the defendant gave consent about the said change of the ratio. Moreover, the defendant denied the meeting, which is more believable than the claim of the plaintiff.

The learned advocate then submits that the plaintiff has miserably failed to prove that in presence of

defendants the disputed meeting dated 20.02.1999 was held, even the plaintiff failed to produce any documentary evidence showing that any notice was served upon the defendant No. 1 for the disputed meeting. In such view of the matter the learned advocate submits that the trial court rightly dismissed the suit.

Drawing our attention to section 31(1) of the Partnership Act, 1932 the learned advocate submits that no person can be introduced as a partner without the consent of all existing partners and in the instant suit the plaintiffs did not mention any word in the pleading and evidence regarding consent of defendant no.1 about inclusion of new partners and as such the trial court rightly dismissed the suit. In support of his submission he referred to the case reported in 1955 PLD 21 (Sind).

Mr. Neogi next submits that according to section 101, 102 and 103 of the Evidence Act, the plaintiff has to prove his case and can not stand on the weakness of the evidence of the defendant. According to him, having regard to the above provisions of law of evidence together with the material evidence on record, the trial court on the correct view of *onus probandi* dismissed the suit on proper allocation of onus inasmuch as section 103 of the Evidence Act though casts some onus upon the defendant to prove his case and in the written statement, that onus is fully discharged by the defendants in the instant case by production of oral and documentary evidence specifically denying the holding of disputed meeting dated 20.02.1999 in paragraph no.23 of the written statement. Since the trial court correctly applied the rules of evidence in the facts and circumstances of the instant case appreciating the evidence on record and accordingly dismissed the suit, it

calls for no interference in this appeal. In support of his submission he cited the case of Golzer Ali Pramanik Vs. Saburjan Bewa reported in 6 BLC (AD) 41.

The learned advocate further submits that it is settled that once the dispute between the parties relating to any matter has been referred to arbitration, the only remedy open to the party is under Arbitration Act and not through any suit and as such the trial court rightly dismissed the suit. On this point he referred the case of Afaq Ahmed Ansari Vs. Zamir Hasan Ansari reported in 1955 PLD 282 (Sind).

The learned advocate finally submits that the trial court upon correct appreciation of law and fact, after elaborately discussing the issues rightly dismissed the suit, which calls for no interference by this Court and the appeal is liable to be dismissed.

In reply Mr. M A Azim Khair, the learned advocate for the appellant submits that regarding the resolution of the meeting dated 01.07.1996 is the profit sharing ratio, not the change of ratio of ownership of the firm. He further submits that the resolution dated 20.02.1999 is the consent of the defendant no.1 in respect of introduction of new partners in the firm; if it is found that the said resolution is legal and valid in that case the provision of section 31 of the Partnership Act has been complied with.

He next submits that by pointing out deposition of PW-1 the Respondent made submission to the effect that with regard to Ext-‘X’ PW-1 made statements in cross-examination that ১নং বিবাদী না পড়েই কোন কিছু স্বাক্ষর করেছেন কিনা আমার জানা নাই। ইহা সত্য নয় যে, আমরা কোন নোটিশ না দিয়েই রেজুলেশন না নিয়ে চতুরতার সাথে শেয়ার রেশিও পরিবর্তন করেছি। and therefore, Ext- 'X' is not legal. The aforesaid statements of the PW-1 were not made in cross-examination but in the

examination-in-chief; the said statements does neither diminishes the case of the plaintiff nor improves the case of the defendants.

We have heard the submissions advanced at the bar, perused the evidence on record including the depositions of both the parties. We have also carefully examined all the exhibits so exhibited by the parties.

It appears from the impugned judgment that the trial court dismissed the suit amongst others on the findings that "উক্ত সভার অনুষ্ঠান সংক্রান্তে ১-২ নং বিবাদী পক্ষকে পূর্বাহে যথাযথ ভাবে অবগত করানো হইয়াছিল বা তাহাদের বরাবরে উক্ত ২০/০২/৯৯ ইং তারিখের সভা অনুষ্ঠান সংক্রান্তে পত্র ইস্যু করা হইয়াছিল মর্মে প্রমানের নিমিত্তে কোন নোটিশ বা অপর কোন দালিলিক সাক্ষ্য অত্র মোকদ্দমায় বাদীপক্ষে উপস্থাপিত হযনি।

বাদীপক্ষে ২য় ও ৩য় সাক্ষী দাবী করেন যে, উক্ত মিটিং সংক্রান্তে কোন লিখিত নোটিশ দেওয়া হয়নি এবং পি/ডব্লিউ-২ এর বক্তব্য অনুযায়ী "University Research Corporartion (Bandgladesh)" এর অফিস সেক্রেটারী উক্ত মিটিং এর বিষয়ে বিবাদীপক্ষকে টেলিফোনে জানাইয়াছিলেন। কিন্তু উক্ত অফিস সেক্রেটারী আদালতে স্ব-শরীরে দাড়িয়ে এই মর্মে সাক্ষ্য প্রদান করেননি যে, তিনি বিবাদীদের উক্ত ২০/০২/৯৯ ইং তারিখের সভা সম্পর্কে জানাইয়াছিলেন।

বিবাদীপক্ষ দাবী করেনযে, উক্ত ২০/০২/৯৯ ইং তারিখের মিটিং এর সিদ্ধান্ত সমূহে তথা পার্টনারশীপ পরিবর্তনের সিদ্ধান্তে যোগসাজসীমুলক ভাবে ১নং বিবাদীর স্বাক্ষর হাসিল করা হয়। ১নং বিবাদী উক্ত ২০/০২/৯৯ ইং তারিখের সভাতে উপস্থিত ছিলেননা।

বিবাদীর এই দাবীর প্রেক্ষিতে বাদীপক্ষ এমন এক ফর্দ দালিলিক সাক্ষ্য উপস্থাপন করেননি যার মাধ্যমে প্রমানিত হইতে পারে যে, উক্ত ২০/০২/৯৯ ইং তারিখের মিটিংয়ে ১/২ নং বিবাদী উপস্থিত ছিলেন। বাদীপক্ষ প্রদর্শনী-X যুক্তে ২০/০২/৯৯ ইং তারিখের সভার সিদ্ধান্তের কপি অত্র আদালতে উপস্থাপন করেছেন। উক্ত সিদ্ধান্তের কপি পর্যালোচনায় এই মর্মে প্রতীয়মান হয়না যে, ১নং বিবাদীনি উক্ত সভাতে উপস্থিত থেকে প্রদর্শনী-X এ স্বাক্ষর প্রদান করেছিলেন। উক্ত স্বাক্ষর প্রদান সংক্রান্তে ১ নং বাদীনি স্বয়ং বিগত ১৪/০৯/০৭ ইং তারিখ এর জবানবন্দীতে বলেন- "১নং বিবাদীনি না পড়েই কোন কিছু স্বাক্ষর করেছেন কিনা আমার জানা নাই। ইহা সত্য নয় যে, আমরা কোন নোটিশ না দিয়াই রেজুলেশন না নিয়েই চাতুরতার সাথে শেয়ার রেশিও পরিবর্তন করিয়াছি।" উল্লেখ্য, ২০/০২/৯৯ ইং তারিখের সভার কোন নোটিশ বা রেজুলেশন এর কপি বাদীপক্ষ অত্র আদালতে উপস্থাপন করেননি। এমতাবস্থায়, ১নং বাদীনির এই সাক্ষ্য দ্বারা এই মর্মে প্রতীয়মান হয়না যে, ১নং বিবাদীনি ২০/০২/৯৯ ইং তারিখের সভাতে উপস্থিত থেকে প্রদর্শনী-X এ স্বাক্ষর করেছিলেন। এই ২০/০২/৯৯ ইং তারিক এর সভাতে উপস্থিতি সংক্রান্তে বাদীপক্ষের ২য় স্বাক্ষী বিগত ১৮/০৯/০৮ ইং এর জবানবন্দীতে বলেন, ২০/০২/৯৯ ইং এর সভাতে আমি ডঃ বারাকাত, প্রফেসর আজিজুর রহমান, প্রফেসর এম. এ. মান্নান এবং প্রফেসর সুশীল রঞ্জন হাওলাদারও ছিল। তিনি জবানবন্দীতে এই মর্মে সুস্পষ্টভাবে দাবী করেন নাই যে, উক্ত সভাতে ১ নং বিবাদীনি সাহিদা আক্তার উপস্থিত ছিলেন। সুতরাং পি/ডব্লিউ-২ এর স্বাক্ষ্য দ্বারা প্রতীয়মান হয়না যে, ২০/০২/৯৯ ইং তারিখের সভায় ১ নং

বিবাদীনি উপস্থিত ছিলেন। উক্ত সভায় উপস্থিতি সম্পকে পি/ডব্লিউ-৩ বিগত ০৯/০৬/০৯ ইং এর জবানবন্দীতে বলেন- আমরা ডঃ আবুল বারাকাত এর নিকট হতে কোন সহযোগিতা ও ব্যবস্থাপনার ক্ষেত্রে পাই নাই। এই প্রেক্ষিতে ১৯৯৯ সনের ২০শে ফেব্রুয়ারী তৎকালীন অংশীদারগণ নতুন ৩ জন অংশীদার অন্তর্ভুক্ত করনের সিদ্ধান্ত নেন। তারা ছিলেন যথাক্রমে- বেগম বিলকিছ আক্তার, সাইদা খান এবং চন্দ্রা বাতাবাইল। আমি উক্ত সভায় ফার্ম এর পরামর্শক হিসাবে ছিলেন। তখন আমি ছাড়াও বিদ্যমান ২ জন অংশীদার ডঃ বরকতে খুদা, ডঃ আবুল বারাকাত ও ডঃ আজিজুর রহমান, ডঃ সুশীল রঞ্জন হাওলাদার এবং নতুন ৩ জন অংশীদার ছিলেন। এই মিটিং সংক্রান্তে কোন লিখিত নোটিশ দেওয়া হয় নাই। অত্র সাক্ষীও সুস্পষ্ট ভাবে বলিলেন না যে, উক্ত সভায় ১ নং বিবাদীনি উপস্থিত ছিলেন। উল্লেখ্য, সভায় বরকতে খুদা ও ডঃ আবুল বারাকাত এর উপস্থিতি দ্বারা ১ নং বাদী ও ১ নং বিবাদীনির উপস্থিতি বোঝায় না। বিধায় অত্র স্বাক্ষীর স্বাক্ষ্য দ্বারাও এই মর্মে প্রতীয়মান হয় যে, উক্ত সভায় ১নং বিবাদীনি উপস্থিত ছিলেন। তদুপরি পি/ডব্লিউ-৩ বর্ণিত উক্ত ডঃ আজিজুর রহমান পি/ডব্লিউ-৪ হিসাবে বিগত ০৯/০৬/০৯ ইং তারিখের জবানবন্দীতে বলেন- আমি উক্ত ২০/০২/৯৯ ইং এর সভায় উপস্থিত ছিলামনা। ঐ সভায় ১ নং বাদীনি ও তার স্বামী ডঃ বরকতে খুদা এবং ১নং বিবাদীনি ও তার স্বামী ছিল। সভায় সিদ্ধান্ত আমি ছাড়াও অধ্যাপক এম, এ, মান্নান এবং অধ্যাপক সুশীল রঞ্জন হাওলাদারকে সভার সিদ্ধান্ত জানানো হয়। এমতাবস্থায়, তার এই সাক্ষ্য হইতে প্রতীয়মান হয় যে, তিনি শুধু নন উক্ত ২০/০২/৯৯ ইং এর মিটিংয়ে অধ্যাপক এম, এ মান্নান ও অধ্যাপক সুশীল রঞ্জন হাওলাদার উপস্থিত ছিলেননা। কাজেই বাদীপক্ষে উপস্থাপিত সাক্ষীদের সাক্ষ্যের উপরিউক্ত পর্যালোচনায় প্রতীয়মান হয় যে, ২০/০২/৯৯ ইং এর সভায় ১-২ নং বিবাদীপক্ষ উপস্থিত ছিলেন এবং তাহাদের উপস্থিতিতেই প্রদর্শনী-X যুক্তে দাখিলি দলিল সাক্ষ্যে বর্ণিত সিদ্ধান্তসমূহ গৃষিত হয় মর্মে বাদীপক্ষ মৌখিক সাক্ষ্য উপস্থাপন করার মাধ্যমে সম্পূর্ণরুপে ব্যর্থ হইয়াছে। এতদ সংক্রান্তে বাদীপক্ষের সাক্ষীবৃন্দের সাক্ষ্য পরস্পর সামঞ্জস্যমূলক নয় এবং সভায় উপস্থিত ব্যক্তিদের নাম সংক্রান্তে সাক্ষীবৃন্দ পরস্পর বৈপরিত্বমূলক সাক্ষ্য উপস্থাপন করিয়াছেন।"

The trial court also found that "অত্র মোকদ্দমায় বাদীপক্ষে উপস্থাপিত প্রদর্শনী-২. ৪. ৫ প্রভতি যুক্তে দাখিলী দালিলীক সাক্ষ্য সমূহে উল্লেখ আছে যে অংশীদারগন University Research Corporation (Bangladesh)" সংক্রান্তে সকল বিরোধ দ্বিপক্ষিক ভাবে সমাধা করিতে ব্যার্থ হইলে আরবিট্রেটরের স্বরনাপন্ন ইইতে হইবে। আরবিট্রেটর এর সিদ্ধান্ত চূড়ান্ত এবং বাধ্যকর হইবে। বৈধভাবে মনোনিত ও নিযুক্ত আরবিট্রেটরগন এর মতামত পরস্পর ভিন্ন হইলে আরবিট্রেটরগন কর্তৃক মনোনিত একদসংক্রান্তে umpire এর সিদ্ধান্ত পক্ষগনের উপর চূড়ান্ত এবং বাধ্যকরি হইবে। কিন্তু অত্র মোকদ্দমার আরজীতে বাদীপক্ষ এই মর্মে দাবী করেন নাই যে, উভয়পক্ষে স্বীকৃত উক্ত আরবিট্রেটরগন পরস্পরভিন্ন মত পোষন করায় বিতর্কিত বিষয়ে সিদ্ধান্ত গ্রহনের নিমিত্তে উক্তরূপ umpire নিযুক্ত হইয়াছিল এবং উক্ত umpire এর সিদ্ধান্ত ১-২ নং বিবাদীপক্ষ মানেন নাই। বরং ১নং বাদীনি বিগত ১১/২/০৮ ইং এর জেরাতে বলেন-"আরবিট্রেশন প্রসিডিং অসমাপ্ত আছে। এর কারন ছিল ১-২ নং বিবাদীর অনুপস্থিতি। যে কারনে আরবিট্রেশন কাজ অসমাপ্ত থাকে। এই প্রসংগে বাদীপক্ষের ২নং সাক্ষীও বিগত ২৬/২/০৯ ইং এর জবানবন্দিতে স্বীকার করেন যে, উভয়পক্ষ আরবিট্রেশন এর স্বরনাপন্ন হইলেও উক্ত আরবিট্রেশন কার্য্য সমাপ্ত হইবার পূর্বেই বাদীপক্ষ আদালতের দ্বারস্থ হইয়াছে। তিনি দাবী করেন যে, ১-২ নং বিবাদী ক্রমাগত ভাবে আরবিট্রেশন এর কাছে না যাওয়ায় আরবিট্রেশন কার্য সমাপ্ত হয়নি। কিন্তু বাদীপক্ষের এই দাবী গ্রহনযোগ্য হইতে পারে না। কেননা এই দাবীর প্রমান স্বরুপ বাদীপক্ষ আরবিট্রেশন কার্যক্রমে আরবিট্রেটরগন কর্তৃক প্রচারিত সর্বশেষ আদেশের কপি অত্র আদালতে উপস্থাপন করেননি এবং আরবিট্রেটরগন আরবিট্রেশন কার্যক্রমে কোন চূড়ান্ত সিদ্ধান্ত প্রদান ব্যতিরেকে সমাপ্ত করিয়া দিয়াছেন শীর্ষক

আরবিট্রেটরগনের সিদ্ধান্তের কপিও বাদীপক্ষ অত্র আদালতে উপস্থাপন করেননি। তদুপরি ১-২ নং বিবাদীর অনুপস্থিতিতে আরবিট্রেটরগন সিদ্ধান্ত প্রদানে আইনতঃ অপারগ ছিলেন মর্মেও বাদীপক্ষের কোন দাবী নাই। বিধায়, বলা যায় যে, আরবিট্রেটরগন হইতে চূড়ান্ত সিদ্ধান্ত গ্রহণ ব্যতিরেকে বাদীপক্ষ আরবিট্রেটরগনের নিকট আনীত প্রার্থনার অনুরুপ প্রার্থনা যুক্তে মোকদ্দমা করিয়াছেন বিধায়, মোকদ্দমাটি প্রদর্শনী-২, ৪, ৫-এ বর্ণিত বিধি মোতাবেক আকারে ও প্রকারে রক্ষনীয়ও হইতে পারে না। উল্লেখ্য, খোদ ১নং বাদীর বিগত ১১/১২/০৮ ইং তারিখের জেরাতে স্বীকার করিয়াছিলেন যে, আরবিট্রেটরগনের নিকট যে প্রতিকার বাদীপক্ষ প্রার্থনা করিয়াছিলেন হুবাহু একই প্রার্থনাযুক্তে বাদীপক্ষ অত্র মোকদ্দমা রুজু করিয়াছেন। আরো উল্লেখ থাকে আরবিট্রেটরগন কর্তৃক চূড়ান্ত সিদ্ধান্ত প্রাপ্ত হইবার পর যদি বাদীপক্ষ অত্র মোকদ্দমা রুজু করিতেন সেই ক্ষেত্রে অবশ্যই মোকদ্দমাটিকে পরিনত মোকদ্দমা হিসাবে আখ্যায়িত করা যাইত।"

It appears from record that main dispute arises centering the partners meeting allged to have been held on 20.02.1999 by which change of ratio of existing 2 partners (plaintiff no.1 and defendant no.1) as well as introduction of 3 new partners alleged to have been held. Plaintiffs claim has been danied by the defendants. The trial court dismissed the suit. Now, we have to see whether plaintiffs could prove their case by adducing and producing evidence on record. It appears from record that Shuhada Banu, plaintiff no.1 examined herself as PW-1 who in her examination in chief stated that as her husband joined at ICDDRB and to oversee the management of the firm by the defendant no.2 she surrendered 10% of her profit sharing and as a result new status of profit sharing stands as her 55% and 45% to the defendant no.1 and to that effect on 01.07.1996 a partners meeting was held which is exhibit-6. The way defendant no.2 managed the administrative and financial affairs of the firm from 1994 was not dissatisfactory and from 01.07.1998 defendant no.2 by misusing power was doing business of the firm singlehandedly, unilaterally and without lawful authority. Defendant no.2 failed to give the proper accounts though the partners asked for it. In such situation in order to promote the business the consultants who had been working for the partnership business namely Dr. MA Manna, Dr.

Azizur Rahman and Dr. Sushil Rnjan Howlader were given a stake in the partnership through their wives namely Begum Bilkis Akhter, Mrs. Sayeeda Khan and Mrs. Chandra Batabyal and their names were proposed by the defendant no.2 himsel.

PW-1 further stated that it is not a fact that she was present in the meeting held on 22nd February, 1999. Not a fact that phone call was disconnected or anyone was sent to the defendant no.1 or Abu Taleb, a staff of the firm was sent to collect signature of Shahida Akhter in the name of Dr. Abul Barkat and it is not known to her. Whether the defendant no.1 put her signature without reading the contents was not known to her. Not a fact that withot issuing any notice or without any resolution fraudulently the ratio was changed. With regard to meeting it was communicated through telephone. Defendant nos. 1 and 2 knew it from very beginning and intentionally were absent in the meeting held on 01.05.99 though got the notice.

In her cross examination PW-1 stated that dispute between the partners arose after the meeting dated 20.02.1999. Shahida is the defendant no.1, who raise the dispute and other than she no one was the partner but business was managed through representative. Allegation was only against Dr. Abul Barkat and none else for which no one was made defendants other than him. Before filing of the suit defendant nos.1,3,4 and 5 were the partners. Defendant no.1 invoked arbitration and Mr. Abdul Quaiyum was defendant's arbitrator while Mr. Fida M Kamal was her arbitrator. … Before the arbitrators the defendant no.1 filed statement of claims and then she filed counter claims. The same claims were made before the arbitrators which has been prayed for in the suit and then said it was not known to her. The PW-1 then stated that what she

claimed before the arbitrators are more or less similar to the prayers of the present suit. PW-1 further stated that the arbitration proceeding was incomplete. Because of the absence of defendant nos.1 and 2, arbitration proceeding was incomplete. She further stated that she cannot recollect whether permission was taken by the arbitrators to file the suit. It's not a fact that the suit is barred as it is filed keeping the arbitration incomplete. The suit is an independent suit. As the defendant nos.1 and 2 did not appear before the arbitration for about one year for which she filed the suit. She prays for 9 remedies in the suit amongst those 8 are common in the arbitration. It is a fact that other remedies could be solved through arbitration but due to absence of defendant nos.1 and 2 it could not be done.

PW-2 Barkat-E-Khuda, in his examination in chief stated that in the meeting dated 20.02.1999 it was held that number of partners would be increased and 3 new partners were included. Plaintiff no.1 surrendered 10% of her share while defendenat no.1 surrendered 5% and all new partners got 5% share each. In the meeting dated 20.02.1999 he, Dr. Barkat, Professor Azizur Rahman, Professor MA Mannan and Professor Sushil Ranjan Howlader were present. Defendant no.2 made hindrance in implementing the decision of the meeting dated 20.02.1999 for which in a meeting dated 01.05.1999 some important decisions were taken when the defendant were absent intentionally. He further deposed that no notice was ever issued in accordance with the rules but office secretary used to inform about the meeting and accordingly everyone would present and all previous meeting were held in the same way.

In his cross examination PW-2 stated that initially the ratio of the partnership was plaintiff no.1 as 50% and Sayeeda Begum and Roxana Parveen as 25% each. Except 1st resolution no copy of the resolution of amendment of shares taken in 2nd 3rd or 4th amendment were not submitted to the Regiatrar of Joint Stock Companies and Firms. It is not a fact that as a result of non-submission of the resolutions the partnership would automatically wond-up. Arbitration preceeding could not be completed as defendant no.1 restrained herself from appearing when some irregularities were found in the audit report. PW-2 denied the suggestion that he deposed for the interest of his wife.

PW-3 M.A. Mannan, in his examination in chief stated that When Dr. Khuda joined ICDDRB Dr. Barkat solely took charge of management of the URCB but he did not cooperate with them. In such situation the then partners decided on 20.02.1999 to include new three partners who are Begum Bilkis Akhter, Sayeeda Khan and Chandra Batabyal and he was the adviser of it. Other than him, Dr. Khuda, Dr. Barkat, Dr. Azzizur Rahman and Dr. Sushil Ranjan Howlader were present there. No written notice of the meeting was issued. Usually no written notice of meeting is issued. It was decided in that meeting that plaintiff no.1 will get 55%, defendant no.1 30% and 5% share each of the new partners. Thereafter in a meeting dated 01.05.1999 management of the firm was rearranged and he was given the charge of chief coordinator and he was present in that meeting. Everyone other than defendant no.1 were present in that meeting though she was informed about the meeting.

PW-4 Azizur Rahman, in his examination in chief stated that he was involved with the URCB from its inception. In a

meeting dated 20.02.1999 it was decided to include their respective wives in the firm but he was not present in that meeting dated 20.02.1999. In that meeting plaintiff no.1, her husband, defendant no.1 and her husband were present. The decision of that meeting was communicated to Professor Mannan and Professor Sushil including him. Usually office secretary through telephone informed about the meeting.

PW-5 Shusil Ranjon, in his examination in chief stated that he was present in the meeting dated 20.02.1999. In that meeting three new partners were included. Dr. Khuda and his wife, Dr. Barkat and his wife, Dr. Azizur and his wife, Dr. Mannan and his wife and wife of PW-5 were also present in that meeting. In his cross examination he stated that no prior notice was issued regarding the meeting dated 20.02.1999 and it was not informed in writing regarding the rearrangement of the partners in that meeting but was informed orally. He denied the suggestion that Dr. Barkat and his wife did not know about the rearrangement of partners in that meeting or wife of Dr. Barkat was not present in that meeting.

On the other hand DW-1 Abdul Barkat, in his examination in chief stated that he was involved with URCB from 1989 through Dr. Khuda. In 1994 65% share of the firm was allotted to the plaintiif no.1 while his wife (defendant no.1) was allotted 35%. Then as recognition of his contribution to the firm, share was reallotted as 55% for plaintiff no.1 and 45% to his wife (defendant no.1). Thereafter on 21.02.1999 at night he received a phone call from Dr. Khuda asking him to sit with him on the next day and accordingly they sat at the Dhanmondi office of the URCB on 22.02.1999. Dr. Khuda discussed about bringing some change in the firm which he disagree. All of a sudden three

persons namely Dr. Mannan, Dr. Azizur and Dr. Sushil entered there who were not supposed to be there in the meeting. Then Dr. Khuda went out of the room with an envelope in his hand. Later he came to know that his wife put her signature in that paper. He was pressurized to do unethical work in that meeting dated 22.02.1999. Then Dr. Khuda called staff Abu Taleb and asked him to go to defendant no.1's house to collect her signature of saying that DW-1 asked her to sign and his wife in good faith put her signature. Later after discussion with him she realize that plaintiff no.1 and her husband obtained her signature by practicing fraurd in order to change the share of the partnership. No notice was issued regarding the change of share and no meeting was called and no resolution was adopted. This change of share was done by practicing fraud and illegal means in order to remove the defendants in such a manner as previously Sayeeda Begum and Roxana Parveen were kicked out.

In his cross examination he stated that it was the rule of URCB to issue notice regarding any meeting and he would be able to show such notice. He admitted the signature of his wife on exhibit-X dated 20.02.1999, Saturday. As per the exhibit-X three new partners are allotted 5% share each and share of his wife was reduced to 30% from 45%. He denied the suggestion that he or his wife was present in the meeting dated 20.02.1999. He further stated that when Dr. Khuda sent Abu Taleb to his residence to collect signature in his name he did not raise any objection as he did not know about the contents of that letter. At that time he had no interst to know about the contents inside the envelop. Later at night he came to know from his wife that Abu Taleb went to his residence and when

his wife signed on the paper he was not present there. The date as 20.02.1999 shown on the letter is incorrect and should be 22.02.1999.

DW-2 Avijit Poddar and DW-3 Mozammel Haque did not state anything regarding the disputed meeting dated 20.02.1999. Both of them stated that they have heard about the dispute regarding the partnership of the firm URCB.

From the depositions of above memtioned PWs it appears that the specific claim of the plaintiffs is that after serving notice upon the partner, the Defendnat No.1, a meeting was held on 20.02.1999 in the presence of defendant no.1 and in that meeting a resolution was taken in relation to inclusion of three (3) new partners by reducing shares of the exgisting two parthers namely plaintiff no.1 from 65% to 55% and defendant no.1 from 35% to 30%. Now, how far the plantiffs have able to prove this claim? It is admitted by the plaintiffs that no written notice was served but it was communicated through telephone. We have already noticed that plaintiffs could not specifically state in their depositions that who communicated with the defendant no.1 through telephone. When the defendant no.1 claimed that she was not informed about the meeting dated 20.02.1999, it was the duty of the plaintiff to prove that notice was served upon her or atleast she was informed in any form either by telephone or by written notice. Changing share of a partnership of existing partners and introduction of new partners is a serious issue and withot consent of the existing partners it cannot be done legally. However, the plaintiffs by Exhibit-X, the disputed resolusion of the meeting dated 20.02.1999, tried to prove that since there is a signature of the defendant no.1, she was present in the meeting. PW-1 claims in her deposition that she and

defendant no.1, the two existing partners held the meeting. But the exhibit-X shows signatures of 5 (five) persons namely the plaintiff no.1, defendant No.1, 3, 4 and 5. Nowhere in her deposition, the plaintiff (PW-1) claimed that in that disputed meeting dated 20.02.1999 other persons were present beside her and the defendant no.1. However, PW-2, the husband of the plaintiff no.1 claimed that in that disputed meeting dated 20.02.1999 he along with Dr. Barkat, Professor Azizur, Professor Mannan and Professor Sushil were present. PW-3 Dr. Mannan and PW-5 Dr. Sushil also stated that they were present in the meeting dated 20.02.1999. But PW-4, Dr. Azizur Rahman clearly stated in his deposition that he was not present in the meeting dated 20.02.1999. He claimed that in that meeting plaintiff no.1, her husband, defendant no.1 and her husband were present while the decision of that meeting was communicated to him and professor Mannan and professor Sushil. He further stated that usually office staff through telephone informed everyone regarding the meeting. If the statement of PW-4, Dr. Azizur Rahman is true then the claim of the other PWs cannot be true. PW-1 further stated that she does not know whether defendant no.1 put her signature after reading the contents of the resolution of meeting dated 20.02.1999. Then the question is whether in a meeting of partners a decision of reducing of shares of existing partners and introduction of new partners is to be taken, is there any scope of presence of so many persons other than the existing partners. The answer is no. Because, in that situation the existing partners may not be able to give their free consent in doing so. According to Partnership Act, 1932 without consent of existing partners no new partners can be introduced. The defendant claimed

that she was not present in that meeting and her signature was obtained from her residence by practicing fraud. If we carefully examined the depositions of the parties then it is revealed that the plaintiffs admitted that the ratio of profit was 55% for plaintiff no.1 and 45% for defendant no.1 as decided in a meeting dated 1st July, 1996 in place of earlier ratio of 65% of plaintiff no.1 and 35% of defendant no.1 and it is evident from exhibit-6 submitted by the plaintiff. Now, as claimed by the plaintiff, if in the disputed meeting dated 20.02.1999 it was decided that plaintiff no.1 would surrender 10% and defendant no.1 5%, then final ratio would have been 45% for the plaintiff no.1 and 40% for the defendant no.1 but the resolution dated 20.02.1999 shows that plaintiff no.1 got 55% while defendant no.1 got 30% share of profit. Which means, all 15% shares have been reduced from the share of defendant no.1 which have been distributed to the new partners. There is no explanation why defendant no.1 would give consent to such resolution which is detrimental to her interest. The plaintiff tried to make out a case that in the partnership deed and other supplemental deeds the ratio shown are share of partners while in the resolution dated 1st July, 1996 was profit sharing ratio. But this claim has no basis if we examine the partnership deed dated 01.10.1989 (Exhibit-2), 1st supplemental deed dated 06.01.1991 (exhibit-4) and 2nd supplemental deed dated 01.12.1991 (exhibit-5). It is crystal clear that in all those documents share has been shown as profit/loss share. So, the claim of the plaintiffs is not true on the basis of the evidence on record. The Defendants definite case is that no notice was served upon them and no meeting on 20.02.1999 was held and a messenger came to their house and took signature of the defendant

no.1 fraudulently saying that her husband Abul Barkat asked her to sign on the paper. The PW-1 stated in his cross examination that she has know knowledge whether Defendant No.1 put her signature on that paper knowing the contents of the resolution. By this admission it neither proves the presence nor consent of the defendant no.1. But the plaintiff has to prove his case, it is the undeniable position of law according to the Evidence Act.

Section 31(1) of the Partnership Act, 1932 reads as under-

> *"31. Introduction of a partner—(1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners."*

From plain reading of the above mentioned section it is clear that for introduction of new partners the consent of all the existing partners is mantdatory. From the evidence of the plaintiffs it is not established that Defendant No. 1 has any consent in introducing new partners. Moreover, from Exhibit-X it appears that only the shares of the defendant no.1 have been reduced. So, it is unbelievable that defendant no.1 had any consent on such introduction of 3 new partners reducing her interest without any cogent reason. In such view of the evidence on record as discussed above the version of the defendants is more believable than the version of the plaintiffs. In the facts and circumstances of the case we are of the firm view that the plaintiffs miserably failed to prove that in the disputed meeting dated 20.02.1999 the defendant no.1 was present and has given her consent in that disputed resolution dated 20.02.1999.

It appears from the record that an arbitration proceeding was going on as in the partnership deed there was an arbitration clause. It further appears that the arbitration proceeding was incomplete and the plaintiffs filed the instant suit admittedly for almost same relief which was claimed before the arbitration tribunal. Arbitration proceeding was started on 01.07.1999 as on that date the Arbitrators entered into the reference (exhibit-10). It appears from the order of the arbitrators dated 16.12.1999 (exhibit-13) that neither the 1st party nor her advocate appeared on that day for which the tribunal passed the following order: "The Arbitrators met at 64, Purana Paltan, Motijheel Commercial Area, Dhaka-1000, on 16.12.1999 at 10:00 P.M. Salehuddin, Advocate, Supreme Court of Bangladesh appears on behalf of the Second Party. None appears on behalf of the First Party.

The appointed Auditors have submitted 4 sets of Audit Reports, one set each for the parties and the Arbitrators hereto. The Auditors Bill dated 7.12.1999 have been paid in full.

The Second Party is given one set of the Audit Report. One set of Audit Report of the First Party is kept with the record. The other two sets of Audit Reports are taken by the Arbitrators.

The next sitting/session of the instant proceeding cannot now be determined in the absence of the First Party. The same may be determined later and the parties will be informed accordingly."

The above order dated 16.12.1999 was the last order of the arbitrators produced before the trial Court by the plaintiffs. It appears from the order dated 16.12.1999 that the arbitration proceeding was going on. In other words,

the arbitration proceeding was incomplete; it was neither stopped not concluded. According to the learned advocate for the plaintiff-appellants that on the basis of joint pryer of the parties the statutory time limit was extended up to 31.12.1999 to complete the arbitration proceedings and due to the absence of the defendant no. 1, who was First Party in the said proceedings, the arbitration proceeding could not be concluded and therefore, after expiry of 31.12.1999 the arbitration proceedings deemed to have terminated as contemplated by the provision of Section 3 read with Clause 3 of First Schedule of the Arbitration Act, 1940 and any award made after expiry of the 4 months would render the award illegal and without jurisdiction. He refers to the case of Md. Ismail Serang Vs. Munshi Ali Hussain reported in 6 DLR 641 in support of his submission. We have carefully examined the exhibited documents relating to arbitration so submitted by the plaintiff-appellants. We donot find any such joint prayer of the parties or any order from the evidence on record that arbitration proceeding was extended up to 31.12.1999.

Let us now examine the relevant provisions regarding the limitation of arbitration as referred by the learned advocate for the appellants. Section 3 of the Arbitration Act, 1940 reads as follows:

> 3. Provision implied in arbitration agreement- An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule insofar as they are applicable to the reference.

Section 28 of the said Act empowers the Court only to enlarge time for making award. While Article 3 of the First Schedule of the Act, 1940 provides as under:

> 3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.

Section 3 and 28 read with article 3 of the 1st schedule to the Act, 1940 it seems there is scope for enlargement of time beyond four months for giviving award by consent of both parties and it is permissible. Such enlargement of time may be provided for in the agreement. What is necessary is the mutual consent of the parties. In absence of such agreement consent may be inferred by conduct of parties. Our this view is well supported by the decision of our Appellate Division in the case of Govt of Bangladesh Vs. Jalaluddin Ahmed reported in 37 DLR (AD) 27. In this case the award given beyond 4 months was declared void ab-initio by the High Court Division and the Appellate Dvision set aside the judgment passed by the High Court Division holding the above observations. In that case the Appellate Division considered the decision reported in 6 DLR 641 (supra) and categorically held that in that decision no authority is mentioned in the judgment nor to the fact whether the parties consented to enlarge the time limit of four months by incorporating any express term in the arbitration agreement or impliedly by their conduct. In that view of the decision of the apex Court the case reported in 6 DLR 641 (supra), cited by the learned

advocate for the appellants of the present appeal, has lost its authority.

The provisions set forth in the first schedule of the Act are subject to the intention expressed by the parties; in other words, the parties can come to a different agreement regarding what is provided in the 1st schedule. In the case of Rising Sun Traders Vs. Chittagong Port Authority reported in 43 DLR 1 it is held that the conclusion of arbitration proceedings depends upon facts and circumstances of each case. The law has not prescribed a minimum time limit for this which cannot be enlarged. Our apex Court in the case of Ahmed Rashid Vs. Md Shafi repoted in 12 BLC (AD) 61 opined that the proposition is well settled that if the terms of any agreement are complied with in this respect, the consequence is not that the award becomes invalid. If from the conduct of the parties concerned it can be inferred that they agreed to the proceedings being continued beyond the period stipulated, then the objection loses all significance.

In the present case the last order dated 16.12.1999 passed by the arbitrators shows that the proceeding was going on. No objection was raised by any party regarding the time limit of the proceedings. In such situation without concluding the arbitration proceeding or without stopping the same the present suit filed by the appellants is not desirable. The plaintiffs should have exhausted the arbitration proceedings. The learned advocate for the appellants could not show from evidence on record that the time limit of proceeding was extended till 31.12.1999. In the facts and circumstances of the case and the points of law discussed above we are of the view that the plaintiffs have failed to prove their case and since the arbitration

proceeding was not concluded/stopped the plaintiffs cannot file the instant suit without exhausting the arbitration proceedings for the similar relief.

Considering the facts and circumstances of the case along with the evidence on record and the points of law as discussed above we are constrained to dismiss the appeal as the plaintiff-appellant failed to prove their case.

In the result the appeal is **dismissed.** However, there will be no order as to cost. The judgment and decree passed by the court of Joint District Judge, 7th Court, Dhaka dated 04.08.2009 is hereby affirmed.

Send down the Lower Court Records along with a copy of this judgment at once.

Md. Iqbal Kabir, J:

I agree.

Ziaul Karim
Bench Officer