

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 165 OF 2023

Edward Rock Paul ...Petitioner

Versus

Anthony Rock Paul and Ors. ...Respondents

**WITH
INTERIM APPLICATION NO. 6740 OF 2024
IN
ARBITRATION PETITION NO. 165 OF 2023**

Edward Rock Paul (Deceased Through Legal Heirs) ...Applicants
1.1. Richard Edward Paul & Ors

Versus

Anthony Rock Paul and Ors ...Respondents

**WITH
INTERIM APPLICATION NO. 10870 OF 2025
IN
ARBITRATION PETITION NO. 165 OF 2023**

Mr. Christin Edward Paul & Anr ...Applicants

Versus

Edward Rock Paul and Ors ...Respondents

**Mr. Shilpan Gaonkar, i/b Prabhakar M. Jadhav, for the
Applicant.**

**Mr. S.C. Wakankar, a/w Aishwarya Bapat, for Respondent Nos.1,
2a to 2d.**

Mr. Shekhar V. Mane, for Respondent No.5.

Mr. Prabhanjan Gujar, for Respondent Nos.6 & 7.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : FEBRUARY 3, 2026

JUDGEMENT:

1. The captioned proceedings entail Arbitration Petition No. 165 of 2023 (“***Section 11 Petition***”), which is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”), and two competing Interim Applications seeking reliefs in the form of permitting the respective applicants to be substituted or, as the case may be, transposed in place of the original Petitioner.

2. Mr. Edward Rock Paul (“***Edward***”) was the original petitioner in the Section 11 Petition. Edward had filed Special Civil Suit No. 837 of 2012 (“***Suit***”) before the Small Causes Court and Joint Civil Judge in Pune seeking various reliefs in relation to his claimed share in the development of certain property situated in Pune (“***Subject Land***”) in terms of a Joint Venture Agreement dated June 15, 2004, executed among Respondent No. 1, Anthony Rock Paul, who is Edward’s brother (“***Anthony***”), Respondent No. 2, originally Cecilia Anthony Paul (now

represented by legal heirs, collectively, “*Cecilia*”) and Respondent No. 3, Just Homes (India) Pvt. Ltd. (“**Just Homes**”).

3. Respondent No. 4, M/s. Rock Enterprises, is a partnership firm (“*Rock Enterprises*”) in which the partners are Anthony, with a 30% share; Mary Rock Paul, the mother of Edward and Anthony (“*Mary*”, with a 30% share); Irene John Paul (“*Irene*” with a 20% share) and Edward’s wife, Ms. Annmarie Edward Paul (“*Annmarie*” with a 20% share). Rock Enterprises was constituted pursuant to a partnership deed dated August 1, 1992 (“*Partnership Deed*”).

4. It is stated that Rock Enterprises became entitled to development rights in respect of the Subject Land situated in Village Wadgaon, in Pune.

5. Mary expired on January 3, 2008. Edward submits that her 30% share is due in equal proportion by Edward, Anthony and their sibling Mr. John Paul in equal proportions. Annmarie passed away on August 1, 2000. Edward, who claimed his share in Rock Enterprises by filing the Suit, has explicitly pleaded that Annmarie’s share of 20% in Rock Enterprises would devolve upon Edward, Respondent No. 5, Ms. Jestina Melwin David (“*Jestina*”), Respondent no. 6, Mr. Christin

Edward Paul (“**Christin**”) and Respondent No. 7, Doretree Alex Irudyiraj (“**Doretree**”) who were Defendant Nos. 5, 6 and 7 respectively in the Suit.

6. Reliefs claimed in the Suit, among others, related to Edward’s share in the developed area arising out of the development of the Subject Land. According to the Respondents, Edward’s entitlement is 50,000 square feet, which he has released in their favour fully and finally, while according to Edward, the area to his share coming through Annemarie’s stake would be in the region of 90,000 square feet.

7. Two release deeds dated December 18, 2000 had been executed by Edward and the partners of Rock Enterprises, in consideration of which he would receive a sum of Rs. 4 crore in lieu of Annmarie’s purported share of 50,000 square feet. Edward also had grievances about the share of Mary and the induction of Cecilia into Rock Enterprises, which he claimed was based on fabricated documents.

8. A further instrument dated November 27, 2002 (“**Release Deed**”) was also executed with Just Homes, by which Edward, Jestina, Christin and Doretree are said to have released their interests in Annemarie’s share in favour of Anthony, Mary and Irene, with Just

Homes having to pay Rs. 2.8 crore out of the Rs. 4 crore, and Anthony having to pay the balance.

9. Edward is said to have been paid Rs. 2.8 crore by Just Homes. The remaining Rs. 1.2 crore was to be paid by Anthony, and there is a dispute about whether it has been paid. Irene too is also said to have executed a Release Deed on the same date and is said to have been paid for an area of 81,250 square feet, while Edward was said to be entitled to only 50,000 square feet, although both had a 20% share in Rock Enterprises. Edward claims to have come to know of this only later, and this is what led to the Suit. He had also pleaded that he had been defrauded and his trust in Anthony had been abused.

10. The Respondents are said to have contended that Edward had received Rs. 80 lakh in cash. Another Civil Suit No. 2153 of 2008 (“*Suit 2153*”) is said to have been filed by Rock Enterprises and its other partners, in which Anthony has claimed that Edward, Jestina, Christin and Doretree had received Rs. 3.2 crore in the aggregate and Edward had received Rs. 80 lakh by cash. It was Edward’s case that Anthony is aligned with Jestina and Christin. According to Edward, the pleadings of Anthony specifically refer to the consideration of Rs. 4 crore relating

to 50,000 square feet, which is in conflict with Irene's share of the same 20% having been released for an area attribution of 81,250 square feet.

11. In the Suit, Anthony, Cecilia, Rock Enterprises and Just Homes filed applications dated August 9, 2012, under Section 8 of the Act, contending that disputes under the Partnership Deed could not be adjudicated outside arbitration in view of the arbitration clause in that instrument. The Section 8 applications were allowed by an order dated July 11, 2022, returning the plaint and referring the parties to arbitration instead.

12. On December 13, 2022, Edward invoked the arbitration clause. The Respondents contended that Edward had retired from Rock Enterprises and could not invoke the arbitration clause. This led to Edward filing the Section 11 Petition on July 12, 2023. Edward passed away on February 14, 2024.

13. In February 2024, Interim Application No. 6740 of 2024 ("IA 6740") was filed by Richard Edward Paul, Martin Edward Paul and Radhika S. Jadhav, the offspring of Edward and Shaila ("Applicants") seeking to be brought on record as Petitioners, as the legal

representatives of Edward's estate. IA 6740 is opposed by Christin and Doretree ("*Opponents*"), and not by Jestina.

14. The reply affidavit dated December 5, 2024, filed in IA 6740 by the Opponents asserts that Edward had himself pleaded that Edward along with Jestina and the Opponents were heirs of Annmarie, and therefore, the Applicants must show how they can claim to be heirs of Annmarie and Edward. Edward's claim was for his share of Annmarie's estate, and therefore, the Opponents claimed, they represent the estate to which Edward laid a claim.

15. In July 2025, nearly a year and a half later, the Opponents filed Interim Application No. 10870 of 2025 ("IA 10870"), seeking to be transposed as Petitioners in place of Edward.

Analysis and Findings:

16. I have heard Mr. Shilpan Gaonkar, Learned Advocate, on behalf of the Applicants and Mr. Siddarth Wakankar, Learned Advocate on behalf of the Opponents, and with their assistance, examined the record.

17. It is apparent that Edward, Anthony and John (Irene held that branch's share in Rock Enterprises) are siblings, and the offspring of Rock Paul and Mary Rock Paul. They had four other siblings, which are not relevant for the analysis of the core issue in these proceedings – as seen above, John's branch had a share in Rock Enterprises. Edward was wedded to Annmarie and had three offspring, Jestina and the Opponents. The Applicants are the offspring of Edward's union with Shaila. The Applicants and Jestina are now aligned while the Opponents are aligned against them.

18. The short question that arises is whether, in view of Edward's demise, the Applicants ought to be substituted in place of Edward in the Petition as representing Edward's estate and interests being pursued in the Petition, or whether, the Opponents ought to be transposed as representatives of Edward's estate and interests in the Petition.

19. The law is well settled that when a party to any proceedings expires, and there is a dispute as to who the legal representative is, the Court would need to determine the question to see how the legal estate and interests of the deceased are to be represented. On the face of it, in this Petition, which is pursuit of initiating arbitration proceedings, the

Opponents have no claim to pursue. In fact, the Section 11 Petition is against, among others, the Opponents, whose interests are aligned against the interests of Edward. It would logically and rationally follow that they would not be the ones who can claim to represent the interests of the deceased Edward in this Petition.

20. The scope of jurisdiction in this case is governed by Section 11, which is primarily the examination of the existence of an arbitration agreement. There can be no quarrel about the existence of the arbitration agreement. The Respondents have been unequivocal about it – they filed the Section 8 Applications to have the plaint in the Suit returned.

21. Under the Act, the provisions of the Code of Civil Procedure, 1908 (“**CPC**”) strictly do not apply, but the Court may be guided by its principles. Yet, when this Court is seized of proceedings within its jurisdiction, and a situation of the nature at hand arises, the Court would be guided by the principles of Order XXII, Rule 5 of the CPC. It would not be open to send all parties to arbitration without clarity on who would be substituted in place of Edward.

22. The contentions of the Opponents of being heirs of Annmarie, in my opinion, are of no relevance. Edward's claim was in relation to the 20% share of Annmarie in Rock Enterprises. When she passed away and he is said to have released his interests through the Release Deed, he is said to have signed off interests in Rock Enterprises which were estimated to entitle him to 50,000 square feet of developed area, while Irene's identical share of 20% is said to have corresponded to 81,250 square feet of area. Edward's grievance is that he had been short-changed by Anthony.

23. In this backdrop, who is the legal representative of Annmarie is not really the question involved here. Who would have an interest in the claim that was being pursued by Edward is the question to ask. Although the reply by the Opponents in IA 6740 relies on the fact that Edward himself had pleaded that the Opponents and Jestina were legal heirs of Annemarie along with him, it should be noted that the demise of Annmarie is not the trigger for who should be the legal representative of Edward. Events after Annmarie's death are what form the subject matter of the Suit, where the plaint was returned owing to the Section 8 Applications of the Respondents. The issue at hand is the constitution of an Arbitral Tribunal. In pursuit of that interest, it is illogical for the

Opponents to claim a right to be transposed in place of the late Edward. They could never represent the interests of Edward which were being pursued against them. Therefore, IA 10870, which was evidently an afterthought and filed well after IA 6740 was resisted, deserves to be rejected.

24. As regards IA 6740, what is clear is that the Applicants are claiming to pursue the interests of Edward, which pursuit was actually targeted against, among others, the Opponents. In the Suit, Edward had specifically pleaded that the Opponents were not cooperating with him and therefore, he had arraigned them as Defendants. Jestina is now specifically aligned with the Applicants as is also seen from the case status in relation to Suit No. 361 of 2025 is filed by the Applicants and Jestina against the Opponents.

25. It is the Opponents' case that the applicants are not offspring from a legitimate union of Edward. This is not a matter for an order following the principles of Order XXII Rule 5 of the CPC to conclusively pronounce upon. The Court faced with competing claims for legal representation of a deceased's interests and estate has to examine the

record and come to a reasoned view upon a summary review and not by conducting a trial on the issue of succession.

26. That the Applicants are offspring of Edward is not doubted in any material on the record. The Opponents solely rely on being legitimate children of Edward's union with Annmarie to assert their position in the matter, and they depend entirely on this facet. Pursuit of Edward's interests is the subject matter of the Section 11 Petition. Annmarie had expired long ago on August 1, 2000. The Opponents' premise that Edward's offspring from his union with Shaila should have no role whatsoever in the estate of Edward simply does not lend itself for acceptance in the situation at hand i.e., deciding who is the appropriate legal representative of the late Edward.

27. What is clear from the attendant facts and a holistic picture emerging from the material on record, including the pleadings about Suit 2153, is that the interests of the Applicants flow from the interests of Edward that are being pursued in the Section 11 Petition. The contentions of the Opponents are a matter of merits of the main matter, which would lie in the domain of the Arbitral Tribunal. What is to be seen in the context of the Section 11 Petition and the attendant Interim

Applications is who is the appropriate legal representative of what Edward is pursuing in these proceedings. For the reasons analysed above, the claim of the Applicants, who are offspring of Edward, also being supported by Jestina, one of the offspring from Edward's marriage with Annmarie, is the one with merit. Therefore, IA 6740 deserves to be allowed.

28. Both sides have extensively cited case law – Mr. Wakankar, primarily to contend that this Court should pronounce upon the question and not leave it to the Arbitral Tribunal, as suggested by Mr. Gaonkar, who too has cited case law in support of the proposition that this Court, under Section 11, should merely refer the parties to arbitration. Since I have clearly returned a finding, based on my assessment of facts, as to who would represent the interests of the late Edward's estate as pursued in the Section 11 Petition in favour of the Applicants and against the Opponents, to avoid prolixity, I am not extracting from, and analysing the case law cited either way on this issue.

29. It is also made clear that the determination of legal representation does not confer on the party in whose favour the right to

represent is decided, any right to property, which is the subject matter of trial, in this case, to be determined in the arbitration proceedings, as clearly declared by the Supreme Court, in *Jaladi Suguna*¹. Whether the Opponents and the other Respondents pursue Suit 2153 against the Applicants as legal representatives of Edward too is a separate matter in those proceedings. As far as the Section 11 Petition is concerned, the determination is clearly based on the Applicants pursuing interests through the late Edward's estate, which includes the claim underlying this Section 11 Petition.

30. Meanwhile, it has been communicated by Mr. Wakankar that legal representatives in place of Respondents No. 2(b) and 2(d) need to be brought on record in view of the demise of the aforesaid Respondents, who had themselves been legal representatives brought in place of Cecilia. These substitutions are allowed and may be incorporated in the course of filing of the Statement of Claim before the Learned Arbitral Tribunal which is appointed hereby.

31. For the foregoing reasons and in disposal of the Section 11 Petition and the Interim Applications as above, an Arbitral Tribunal is hereby constituted in the following terms:

1 Jaladi Suguna (Deceased) vs. Satya Sai Central Trust and Others – (2008) 8 SCC 521

A) Justice (Retd.) Shalini Phansalkar Joshi, a former judge of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

Office Address:-

Bungalow No. 12, Bhagya Chintamani Nagar,
Paud Road, Kothrud, Pune – 411 038.

Email ID: phansalkarjoshi@gmail.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from the date of upload of this order. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of

this Order;

D) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

E) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

32. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength

of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

33. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]