IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19..08..2016

C O R A M

The Hon'ble Mr. **SANJAY KISHAN KAUL**, Chief Justice

Original Petition No.383 of 2016

Mahender Kumar Gupta .. Petitioner

versus

1. Nand Kishoreji Goel

2.Gita Devi.

3.Sarwankumari

4.Vijayakumar Goyal

5.Shri Shambu Kumarji as Karta of Shambu Kumar & Sons,

6.Sheela Gupta.
7.Raju Kumar Gupta
8.Ashok Kumarji Gupta
9.Girish Gupta. .. Respondents

- - - - -

Prayer : Petition filed under Section 11(4) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator to resolve *the disputes between the parties in terms of the Re Constituted Partnership Deed dated 07.11.1980.*

- - - - -

For Petitioner : Mr.S.Kalyanaraman

For Respondents : Mr.K.Jayachandran for R.2, 5, 7 and 8
Mr.Raghu Balaji for R.4.

- - - - -

O R D E R

The petitioner has filed the present petition under Section 11(4) of the Arbitration and Conciliation Act, 1996, in respect of the disputes arising out of the partnership deed dated 07.11.1980. The Partnership consisted of ten partners, two partners passed away and respondent Nos.8 and 9 are the legal heirs.

2. The partnership is at will and the petitioner has served notice for dissolution of partnership dated 26.09.2015.

3. The partnership deed contains the Arbitration Clause-21, which reads as under:

"21.In case of dispute(s) that could not be settled in the manner

> explained in the forgone clause, the same shall be referred to Artbitration and the Proceedings of the Arbitration shall be under the Indian Arbitration Act, then in force."

4.The opposition to the petition is only by the 4th respondent, though no reply has been brought on record. Learned counsel for the 4th respondent submits that the Partnership cannot be dissolved as a consequence of death or retirement of partners in view of Clause-19, which reads as under:

> "19.The Partnership shall not be dissolved by the death or retirement of any of the Partners and the surviving partners with or without taking the deceased/retired partners legal heirs/representatives shall continue the business on such terms as may be agreed upon then or under this terms and conditions, as may be decided upon."

5. The aforesaid plea has no merit, as the petitioner, who issued the notice for the dissolution of the firm, is an existing partner and not a legal heir.

6.Learned counsel for the petitioner further submits that in the aforesaid context, learned single Judge of this Court in ***Hindustan Life Care vs. N.Ramesh*** reported in ***(2009-2-LW 68)*** has taken a view that an arbitrator cannot go into the issue of dissolution of the firm. In this behalf, he relied on paragraph Nos.48 and 49 of the Judgment, which reads as under:

> "48. In the light of the decision that an arbitral Tribunal is not a Court and that unless the agreement provides for a dissolution under the stated circumstances in Section 44, the arbitral Tribunal cannot assume jurisdiction to pass an award dissolving the firm on just and equitable grounds as given under Section 44(g).
>
> 49.Now adverting to the facts in this case, the agreement provided that the dissolution can be brought forth only in terms of Clause 21 of the supplementary agreement. Learned counsel for the first erspondent submitted that as per Clause 15, it was agreed that in case there is dispute among the partners, the provisions of Indian Arbitration Act, 1940, shall apply. Hence, the disputes stated therein have to be understood as including the one seeking dissolution by a partner, which was contested by other partners. As already pointed out, even though the said argument would have gone for acceptance, the fact remains that the agreement contemplated dissolution only by majority of the members and that the right given to an individual partner is only to seek a retirement. It must be remembered that the supplementary agreement provides in detail as to the rights and obligations of partners' post-retirement and that if one partner or two partners wish to leave the firm, they shall do so only by retirement from the partnership. The number of partners are four in number. The Act contemplates a minimum of two partners to constitute a partnership. Hence, by exit of one or two partners, the partnership does not come to an end automatically. However, if any one of the partners wishes to go for a dissolution, the provisions that guide such exercise would be one as outlined under the Indian Partnership Act and certainly not by virtue of what has been

agreed on under the Partnership deed."

7. A perusal of the aforesaid observation shows that in the given facts of that case, a retired partner wishing to move out of the firm was not entitled to dissolve the firm, but seek retirement. This is not so in the present case and it is undisputed that it is a partnership at will where an existing partner has dissolved the firm and now referred the disputes to arbitration.

8. Thus, the objections to the petition cannot be sustained and are rejected. It is abuntantly clear that there is a partnership which has been dissolved and there are disputes inter se the parties with provision being made for resolution of disputes by arbitration. The jurisdiction is also undisputedly of this Court.

9. I thus appoint ***Mr.Authinathan, a retired District Judge, residing at Authinathapuram, Alwar Thirunagarai (post), Thoothukudi District, (Mobile No.9443084123),*** as the Arbitrator to resolve the disputes between the parties. The arbitration proceedings will be conducted under the ageis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of

the Centre.

10. The original petition is accordingly allowed, leaving the parties to bear their own costs.

(S.K.K., CJ.)

19th August, 2016

ksr

The Hon'ble the Chief Justice

(ksr)

O.P. Nos.383 of
2016

19..08..2016