

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.07.2017
DATE OF DECISION: 28.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.167 of 2017
and
C.M.P.No.1124 of 2017

N.Syamala Devi
W/o.N.Raghavulu Naidu
Rep. by her duly authorised
Power of Attorney Agent N.Raghavulu Naidu,
Plot-Q-24, New No.48, M.M.D.A. Colony,
Arumbakkam, Chennai 600 106. ... Appellant/1st Respondent

Vs

1. E.RaghavaRao ... 1st Respondent/Applicant
2. Dr.GeethaHaripriya @ Geetha Gopalaswamy
3. G.Kamala
4. S.Raghuvaran ... 2 to 4 Respondents/2 to 4 Respondents

Cause title accepted vide order of Court dated 23.12.2016
by SVJ made in CMP No.20442/16 in CMA Sr.93447/16.

This appeal is filed under Section 37 of the Arbitration and Conciliation Act 1996, to set aside the order passed by the Learned Arbitrator dated 4.11.2016 in the matter of dispute between Dr.GeethaHaripriya and 2 others and N.Syamala Devi and another.

For Appellant : Mr.V.Prakash, Senior Counsel
for Mr.R.N.Amarnath

For Respondents : Mr.M.K.Kabir, Senior Counsel
for Mr.Anand Sashidharan

J U D G E M E N T

This appeal is filed under Section 37(2) of the Arbitration and Conciliation Act 1996, against an interim order made by learned Sole Arbitrator on 04.11.2016.

2. The subject matter of the dispute referred to arbitration, is in respect of land measuring about 7½ grounds which was allotted by the Tamil Nadu Housing Board to the appellant for running a school. The said land formed part of a larger lay out formed by the Tamil Nadu Housing Board in Arumbakkam, Chennai 600 106. Though the allotment was made in the name of the appellant N.Syamaladevi, it is claimed that respondents had also contributed for payment of the sale consideration due to the Housing Board for the said land. In fact a school in the name of Maruthi Vidyalaya was established and was functioning in the said land. The authorities namely the Director of School Education had granted permission for running the school.

3. According to the claimants namely respondents in this appeal, Dr.G.Srinivasan, father of the respondents 2 and 4 and the other claimants have also contributed towards the cost of the land and for putting up the super structure. It is also claimed that a partnership was formed in the year 1984 between the claimants 1 to 4 and the respondents as partners. The 2nd respondent in the claim petition who is the 4th respondent in the appeal was included as a minor partner. A partnership deed was also drawn up on 10.05.1993 between the parties. The partnership was named as Maruthi & Co., the method of sharing of the profits and losses were also set out in the partition deed.

4. The school was being run as a primary school and in order to obtain recognition and upgradation as a Matriculation School the parties have decided that the administration of the school is to be handed over to the trust as per the statutory requirements. Accordingly, a trust was formed vide trust deed dated 24.09.1996 nominating the following persons as the trustees; N.Syamala Devi (appellant), N.R.Hemalatha (Daughter of the appellant), E.Raghava Rao (1st respondent), Dr.C.Geetha Gopalaswamy (2nd respondent), Mrs.Jamuna Chandrayya and Mrs.G.Mala as the trustees. Mrs.N.Syamala Devi, appellant herein is the author and permanent trustee. The school was ultimately upgraded in the year 1999, the administration of the school was being carried on by the trustees with the first respondent E.Raghava Rao, playing a major role in the management and up bringing of the school and regular meetings of the trustees were held. It is the case of the respondents, in the arbitration proceedings that the husband of the appellant namely Raghavulu Naidu, who was working as the Head Master in Government service had resigned and worked in some other service till about June 2004 decided to enter the school run by the trust. It is claimed that the said Raghavulu Naidu, made the then Principal to resign from her post and got himself inducted as the Principal. The other trustees did not raise any

objection for the said taking over in as much as they believed that the said Raghavulu Naidu would carry out his duties with due diligence in view of his experience as the Head Master of a Corporation School earlier.

5. Contrary to their expectations, the said Raghavulu Naidu kept the claimants away from the day to day administration of the trust and also the affairs of the school. There were several irregularities in the administration of the school, including transfer of funds from the account of the school to new account in which the appellant herein was the sole signatory. In a trust meeting that was held in April 2006, the appellant had for the first time contended that the land in question on which the school building was constructed belonged to her and as such she is entitled to rent for the use of the land by the school. It is only then the claimants did realise that the appellant along with her husband has been scheming to take over the school and its properties in breach of the partnership agreement. The appellant and her husband became more aggressive and the trustees were even prevented from entering the office room and the board was also put up stating that properties belong to the appellant and others should not enter the premises without the permission of the appellant and her husband. The other trustees however, claimed to have convened meeting outside the premises on 13.05.2006 and passed certain resolutions. It is also claimed that a Writ Petition was filed complaining about the action and seeking an order against the police for rendering a helping hand to the appellant and the said Writ Petition, it appears, was disposed of by this Court on 07.05.2006 with the direction to the first claimant to withdraw the complaint given by her to the police.

6. According to the claimants the harassment continued. It led to the filing of the suit in CS.No.567 of 2006 by the claimants seeking a declaration declaring that the property belongs to the partnership firm called Maruthi & Co., and for a permanent injunction restraining the 1st and 2nd defendant from dealing with the property more particularly set out in the schedule or from alienating the same and for other reliefs.

7. In the said suit it appears an application was filed seeking rejection of the plaint and the said application came to be allowed and the plaint was rejected, by an order dated 28.08.2009. Thereafter, an application in OP No.15 of 2011 was filed for referring the dispute to a Sole Arbitrator by virtue of the terms contained in the partnership deed dated 10.05.1993. Accordingly Hon'ble Justice N.V.Balasubramanian, Retired Judge of this Court, was appointed as the sole arbitrator. Thereafter the present arbitration proceedings commenced before the learned Arbitrator. It is now claimed that the school namely the

Maruthi Vidyalaya Matriculation School has been closed. Apart from CS.No.555 of 2006 another suit in CS No.407 of 2006 was also filed by the appellant, her husband Raghavulu Naidu and her daughter Hemalatha Shree @ Hemalatha Srinivasan, seeking a declaration that the resolutions of the trust dated 08.04.2006 and 06.05.2006 relating to the affairs of the Maruthi Matriculation School are not valid and binding on the plaintiffs and for a consequential injunction restraining the defendants namely the claimants from interfering with the functions of the first plaintiff as correspondent of the school and the second plaintiff as the principal of the school and for other reliefs. The said suit is pending. Along with the said suit the Original Applications Nos.444 to 446 of 2006 were filed seeking injunction restraining the defendants from interfering with the rights and functions of the first applicant namely appellant herein from functioning as the correspondent of the school, for a consequential injunction restraining the respondents/defendants from interfering with the second plaintiff functioning as the Principal of the school and injunction restraining the respondents/defendants from interfering with their possession of the plaintiffs school and its properties.

8. On 07.06.2006, this Court passed an order directing the plaintiffs in CS No.407 of 2006 to open a separate Bank account with reference to the collection of school fees which is to be operated jointly by the first plaintiff/appellant herein and the first defendant in the suit namely Jamuna Chandraya, one of the trustees. Subject to the said opening of the account this Court has granted an injunction restraining the defendants in CS. No.407 of 2006 from interfering with the rights and functions of the first plaintiff/correspondent and the second plaintiff as the Principal of the school. It is also seen that the said interim orders were extended until further orders on 31.07.2007 and it is stated by both the Senior counsel appearing on either side that the suit is still pending. While so it appears that there were complaints and counter complaints by the parties against each other to the Town and Country Planning Authorities, regarding the violations made in the school buildings as well as the buildings of the hospital belonging to the respondents. This resulted in spate of Writ Petitions and according to the appellant the school namely Maruthi Matriculation School was forced to be shut down due to the complaints made by the respondents herein. On the complaints made to Town and Country Planning Authorities, according to the appellant, a Portion of the school buildings was demolished. It is not necessary for me to go in to the said controversy in these proceedings. While things stood thus the Sole Arbitrator took up the arbitration and the proceeding before the arbitrator commenced in the year 2015 with the lodging of the claim petition. The reliefs sought for before the arbitrator were for a declaration that the

property in question belonging to the partnership firm called Maruthi & Co., for dissolution of the said partnership firm and for accounts of the partnership business and other reliefs.

9. The said claim was resisted by the appellant contending that the property in question belongs to her and the school was started by her and the claimants along with other trustees were inducted only as trustees when Maruthi Educational Trust was formed to comply with the statutory requirements relating to the running of a Matriculation School. Pending the Arbitration proceedings the second claimant/first respondent filed an application under Section 17 of the Arbitration Act, seeking an order of injunction restraining the appellant herein, her husband, associates, agents or any person claiming through or under her from alienating or encumbering or dealing with the partnership property at Plot No.110-A, Q Block, M.M.D.A. Colony, Arumbakkam, Chennai 600 106, pending disposal of the Arbitration proceedings.

10. This application came to be filed in view of the apprehension that the appellant is attempting to start a new school by transferring the property in question by way of long lease in favour of the new trust consisting of herself and her family members. In fact the appellant had executed a lease deed in favour of a new trust purporting to lease out the property which is the subject matter of the arbitration proceedings called Narravula Rukmani Venkama Trust, for a period of 30 years and executed a registered lease deed dated 29.05.2010 in favour of the said trust. A suit came to be filed by the claimants in the arbitration proceedings and other trustees of the Maruthi Education Trust contending that the execution of lease deed in favour of a new trust itself is invalid and for framing a scheme for administration of the Maruthi Education Trust. The respondents as claimants before the Arbitrator would also contend that the Maruthi Matriculation School was closed by the appellant and her husband only with plans to create a new trust and screen away the property from the partnership firm as well as the Maruthi Education Trust. When attempts were made to start a new school in the name of Rukmani Matriculation School by the appellant and her husband, the first claimant E.Raghavulu Naidu, came forward with the above application seeking order of injunction under Section 17 of the Arbitration Act.

11. The appellant resisted the said application contending that in view of the interim orders granted in CS No.407 of 2006, the present application seeking an injunction is not maintainable. It was also contended that the lease deed has been executed as early as on 29.05.2010 and therefore the starting of the school by the new trust namely Narravula Rukmani Venkama Trust cannot be injuncted. It was also claimed

that all the applications have been made and the necessary certificates for opening a new Matriculation School have been obtained. Therefore there cannot be an order of injunction as prayed for in the application.

12. The learned Arbitrator after considering the rival contentions had passed an order permitting the appellant to file necessary applications for permission and recognition to open the school for the next academic year 2017-2018 within the time limit and if the Educational Authorities grant necessary permission and recognition for the academic year 2017-2018, it will be open to the first respondent to approach the tribunal for modification of the order if necessary. With liberty so granted the learned Arbitrator granted an interim injunction restraining the first respondent, her husband and associates from alienating or encumbering or dealing with the property in question. It is this order of the Arbitrator is now the subject matter of challenge in this appeal.

13. I have heard Mr.V.Prakash, learned Senior Counsel for Mr.R.N.Amarnath, learned counsel appearing for the appellant and Mr.M.K.Kabir, learned Senior Counsel for Mr.Anand Sashidharan, learned counsel appearing for the respondents.

14. According to Mr.V.Prakash, learned Senior Counsel appearing for the appellant the question whether the property belongs to the partnership or not has to be decided in the Arbitration proceedings. As regards right to manage the school it is the subject matter of CS No.407 of 2006. He would also point out that an order of protective injunction has been granted in favour of the appellant in CS No.407 of 2006. The execution of the lease deed for a period of 30 years is the subject matter of the suit in CS No.196 of 2011. He also invited my attention to the orders of this Court wherein the applications for interim injunction filed by the respondents herein in CS No.196 of 2011 were dismissed by this Court. Placing reliance on the effect of the interim orders in CS No.407 of 2006 as well as the dismissal of the injunction application in CS No.196 of 2011, the learned Senior Counsel would contend that the Arbitrator should not have granted the interim protection under Section 17 of the Arbitration Act. According to the learned Senior Counsel it is the observation of the Arbitrator, at paragraph 10 of the order, which runs as follows:

"10. In these circumstances I hold that the property should be protected till the conclusion of the arbitration proceedings and I also direct both the parties to render full assistance for the completion of the arbitration proceedings as expeditiously as possible. Though the Power of Attorney agent of the

1st Respondent has given an undertaking that the 1st Respondent would not alienate the school, if the management and control of the school had to be transferred to 'Rukmani Matriculation School' for the period of 30 years and if such school is allowed to run for a period of 30 years on the basis of deed of lease dt.27.09.2010, it will affect and prejudice the interest of the claimants with reference to the reliefs claimed in the claim petition. Hence I am of the view that the subject matter of the arbitration proceedings should be protected without any third party intervention as prayed for by the Applicant." which affects the rights of the appellant.

15. Per contra Mr.M.K.Kabir, learned Senior Counsel appearing for the respondents would submit that the title to the property itself is in question in the proceedings before the Arbitrator and by executing a lease deed for a period of 30 years in favour of the trust in which the trustees are the family members of the appellant, the appellant is attempting to screen away the property from the other partners.

16. Pointing out the conduct of the appellant in closing the school which was run in the name of Maruthi Matriculation School for which permission has been obtained by Maruthi Education Trust in 2011 after having executed a long lease in favour of a new trust created by her under her husband, the learned counsel would submit that the action of the appellant is nothing but a fraud on Court. The learned Senior counsel would also draw my attention to the interim orders passed in CS No.407 of 2006 wherein this Court has directed a joint account to be opened which is to be operated by the appellant and one of the trustees Mrs.Jamuna Chandraya. By pointing out the order of injunction restraining the claimants and the other trustees from interfering with the Management of the school, the learned Senior counsel would submit that the present attempt on the part of the appellant is to close down the school and start a new school through a new trust created by her is nothing, but an attempt to wriggle out the effect of the interim orders of this Court.

17. The learned Senior Counsel would also contend that as regards dismissal of the applications in OA.Nos.283 to 284 of 2011 in CS.No.196 of 2011 the same was not on merits and the applications were dismissed only on the ground that the school namely the Maruthi Matriculation School has been closed. The learned Senior Counsel would also point out that the Arbitrator has not shut out the rights of the appellant and it is always open to her to move the Arbitrator, after obtaining the necessary permissions for running the school during the academic year 2017-2018.

18. The points for determination that arises in the context of the facts narrated above and the arguments of the learned Senior Counsels on either side is: Whether the sole arbitrator was right in granting an interim protection in the course of the arbitration proceedings holding that the applicant has made out a prima facie case?.

19. Mr.V.Prakash, learned Senior Counsel appearing for the appellant would in all fairness concede that the claimants have also made certain contributions when the property was purchased in the name of the appellant from the Housing Board. He would however deny the claim that there was a partnership firm established in the year 1993. These questions, whether there was a partnership, whether there was an agreement to share the profits or losses and whether the property belongs to the appellant or the partnership firm etc., will have to be decided by the Arbitrator on the basis of the evidence already recorded/to be recorded by the Arbitrator.

20. It is seen from the records that there has been proceedings pending in the Court from the year 2006. The parties are at loggerheads from 2006 onwards and complaints and counter complaints have been made by each other. While so the appellant had executed a lease deed for a period of 30 years claiming that she is the sole owner of the property, in favour of a trust of which she is also managing trustee and the other trustees happen to be the family members of the appellant. After execution of the registered lease deed, the school that was running in the suit property in the name of Maruthi Matriculation School has been closed, of course, the appellant would contend that the school was closed because of the complaint lodged by the respondents to the Town and Country Planning Authorities regarding the violation of building rules. In any event I prima facie feel that the appellant and the family members are acting with an intention to keep the respondents at bay. Even if the respondents succeed before the arbitrator. The execution of a lease deed in favour of a newly created trust for a period of 30 years and renaming of the school that was being run as Rukmani Matriculation School and claiming that it is a new school which is opened by a new trust after closure of Maruthi Matriculation School which is being run there do not portray the appellant as a bona fide person attempting to do public good by running a school in an area which is classified as meant for economically weaker section. While the respondents are criticized as persons who are in the medical field and it is claimed the husband of the appellant who is the retired teacher wants to run a school in order to utilize all the experience as a retired teacher, the learned Senior Counsel would contend that all the claimants/respondents are

interested only in money. He would also claim that his client is only interested in running the school.

21. Though the argument is fascinating, I do not think the same could be accepted, on the face of it, in view of the conduct of the appellant. After obtaining interim order from this Court protecting her possession and right to function as the correspondent of the school she had chosen to execute a lease of the property meant for the school in favour of the new trust floated by her and has taken advantage of the complaints made by the respondents to the Town and Country Planning Authority to close down the school. This conduct of the appellant, in my considered opinion, would show that her intentions are not bona fide.

22. As rightly pointed out that by the learned Senior Counsel appearing for the respondents if the appellant is allowed to start a new school with the permission of the authorities in the property in question, the rights of the respondents/claimants would be seriously prejudiced in the event of their success in the arbitration proceedings. If the Arbitrator is to conclude that the property belongs to the partnership the appellant would have only $\frac{1}{4}$ right. But the lease deed executed by her claiming to be the absolute owner would prevent the other sharers who have $\frac{3}{4}$ rights from enjoying the fruits of the award that may be passed by the Arbitrator.

23. As rightly printed out by Sri.M.K.Kabir, learned Senior Counsel the Arbitrator has not shut out the parties, he had given liberty to the appellant to seek modification of the order if necessary after obtaining the necessary permission from the authorities concerned. The observations of the learned Arbitrator at paragraph 10 are meant only to protect the property which is the subject matter of the arbitration without any third party intervention. Though the property has been lease out under a registered deed dated 27.09.2010 the lessor namely the new trust had not done anything pursuant to the lease deed till date. It is yet to get the statutory permission as required under the Tamil Nadu Regulations for Matriculation Schools.

24. The learned Senior counsel would also point out that the arbitration proceedings are almost over and what remains is only the evidence that is to be let in by the appellant which could be completed at the earliest if only the appellant cooperates with the arbitrator.

25. I have considered the rival submissions. As already pointed out by me the creation of a new trust and execution of a lease deed in favour of the new trust for period of 30 years by

the appellant would only reflect the intention of the appellant and her family members to keep the respondents at bay, even in the event of their success in the arbitration proceedings. The fact that the respondents have contributed for the purchase of the property from the Housing Board is not denied. Whether it was out of charity as claimed by the learned Senior Counsel for the appellant or with an intention to do a business in partnership as claimed by the respondents will have to be decided by the Arbitrator in the proceedings pending before him.

26. The proceedings under Section 17 before the arbitrator are akin to proceedings under Order 39 of the Code of Civil Procedure. But a wider discretion, however, is granted to the arbitrators under Section 17 than that is available to the Court under Order 39 of the Code of Civil Procedure.

27. On the analysis of the rival pleadings in all the pending proceedings as well as the conduct of the parties through out, I am of the considered opinion that the Arbitrator was right in concluding that the property needs to be protected from third party intervention pending the arbitration proceedings. Therefore I see no reason to interfere with the conclusions arrived at by the Arbitrator. In fact the Arbitrator has very magnanimously granted liberty to the appellant to seek modification of the order in the event she is able to secure permission to run a school which can be taken advantage of by the appellant. The formation of a new trust and execution of lease deed in favour of the trust and closure of the school that was running after the execution of the lease deed in favour of the new trust by the appellant, according to me, are actions designed to circumvent the interim order of this Court in OA.Nos.444 and 445 of 2006 in CS No.407 of 2006. This conduct of the appellant prevents me from interfering with the discretion exercised by the Arbitrator.

28. For all the above reasons the appeal is dismissed, confirming the order of the learned Arbitrator dated 04.11.2016 under Section 17 of the Arbitration and Conciliation Act, however there will be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jv

To

The Arbitrator
Arbitration & Conciliation Centre,
Arbitral Tribunal,
High Court, Chennai.

+1cc to Mr.Anand Sasidharan, Advocate, S.R.No.53915

+1cc to Mr.R.N.Amarnath, Advocate, S.R.No.53821

+1cc to Mr.R.Senthil Kumar, Advocate, S.R.No.53721 (21.08.2017)

C.M.A.No.167 of 2017
and
C.M.P.No.1124 of 2017

VGI (CO)
CA(09/08/2017)



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