

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.08.2017

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. No.162 of 2017

1.S.Suresh Kumar

2.S.Uma Rani

.. Petitioners

-vs-

P.Arunkumar

.. Respondent

Prayer: Petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 to appoint an Arbitrator to resolve the disputes between the petitioners and the respondent as per Clause 17 of the Partnership Agreement dated 10.10.1988 and Clause 11 of the partnership Deed dated 01.04.2003 in respect of the partnership firm M/s.Vimal Fireworks Factory, Sivakasi (Firm Regn. No.225 of 1989 of Virudhunagar District).

For Petitioners : Mr.A.V.Arun

For respondent : Mr.A.Prabhakaran

O R D E R

This petition, filed in terms of Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short 'Act') seeks the appointment of an Arbitrator to resolve the disputes as between the parties.

2.The facts in brief are as follows:

(i)A deed of partnership dated 02.03.1988 and constituting a firm under the name and style of Vimal Fire Works was entered into between five individuals, of which Mr.T.Pandian the father of the respondent was one. The partnership was, re-constituted on 12.12.1996 to continue with only Mr.T.Pandian and Mr.M.Srinivasan as partners, the other three individuals retiring from the firm. On 01.04.2003, the respondent was inducted as a partner to continue the same business with Mr.M.Srinivasan, his father Mr.Pandian releasing himself from the firm on and with effect from 31.03.2003.

(ii)Deed of partnership dated 01.04.2003 contains clause 16 stating as follows:

'16.That this partnership business shall not be dissolved with the death or retirement of insolvency of any partner. In case of death, insolvency or retirement of any partner the existing partners would carry on the partnership business. The outgoing partner or the legal representative of the deceased partner would not be entitled to any share in the goodwill and assets of the firm which shall rest in the remaining partners but such outgoing partner or the legal representative of the deceased partner shall only be entitled to the credit/debit balance in the account of such deceased/outgoing

partner and the profit/loss, if any till the date of death or retirement.'

(iii)The parties to the deed of partnership dated 01.04.2003 thus agreed that in the case of either death, insolvency or retirement of any of the existing partners, the business shall be carried on by the remaining partners and the outgoing partners or the legal representative of the deceased partners shall be entitled to the credit/debit balance in the account of such deceased/outgoing partner and the profit/loss if any till the date of the death or retirement.

(iv)Deed dated 01.04.2003 also admittedly contains a provision for resolution of disputes by way of alternate dispute resolution at clause 11, which reads as under:

'11.That all disputes arising amongst the partners will be referred to and settled by arbitration and the arbitrator or arbitrators will be appointed in a manner to be mutually decided upon amongst the partners. In case of difference of opinion, regarding the manner of appointment of arbitrator or arbitrators, the provisions of arbitrations Act 1940 shall apply. Any awards given by the sole arbitrator of unanimous or majority award of the arbitrators shall be binding on the parties to this deed. In case of even number the arbitrators are appointed and their opinion is equally divided, the arbitrators would appoint an umpire and the award

of such umpire shall also be binding on the parties to this deed.'

(v) Mr. M. Srinivasan, father of the first petitioner passed away on 16.10.2013. The firm thereafter stood reconstituted inducting the first petitioner, son of Mr. M. Srinivasan as well as his wife as partners under Deed of Partnership dated 17.10.2013.

(vi) Pursuant thereto, the business of the firm continued uninterrupted with all statutory licences under the Explosives and Arms Acts being renewed in the name of the 1st petitioner herein.

(vii) Mr. Arun, learned counsel appearing for the petitioners would submit that while this was so, on 04.07.2015, the respondent would falsely aver that Release Deeds had been executed by the petitioners in September, 2014 stepping out of the partnership and renouncing all their rights to the respondent, his wife and minor son who had been inducted into the firm.

(viii) Serious disputes arose between the parties relating to the Release Deeds alleged to have been executed by the petitioners. The respondent is alleged to have forged the signatures of the petitioners in the Release Deeds and filed Form V before the Registrar of Firms and

District Registrar, Virudhunagar, who consequently made changes in the Register of Firms.

(ix) The disputes were carried to this Court in W.P. (MD) No.12281/2015, and by order dated 16.11.2016, this Court directed the District Registrar (Firms), Virudhunagar District to take note of the objection of the petitioners, make an endorsement thereof in the remarks column as per Rule 7 of the Madras Partnership (Registration of Firm) Rules, 1951 and issue a copy thereof to the petitioners. The said order stands complied with by the District Registrar (Firms), who, under cover of letter dated 23.12.2016 has forwarded an extract of the Register to the petitioners.

3.Mr. A.V.Arun, counsel appearing for the petitioners would state that the facts as narrated above would make it amply clear that disputes have arisen between the parties that are liable to be resolved by arbitration and in the light of the provisions of clause 16 of the Deed dated 17.10.2013 and the provisions of the Indian Partnership Act, 1932. Mr.A.Prabhakaran, counsel appearing for the respondents would object pointing out that Deed of Partnership dated 17.10.2013 does not contain a clause for arbitration and as such there can be no reference to Arbitration as sought for by the petitioners.

4.I do not agree. Clause 16 in Agreement dated 01.04.2003 between the parties provides for the continuance of the terms and conditions of business in the event of death, insolvency or retirement of a partner. Though claim 16 provides for the continuance of the business by the existing partners and the manner of settlement of the outgoing/deceased partner, I would, in the present case, read it along with the clauses in Agreement dated 17.10.2013 to mean unequivocally that the terms of the partnership stand extended to the subsequently re-constituted firm as well. Agreement dated 17.10.2013 states in the recitals thus:

WHEREAS, the said Sri.M.Srinivasan demised on 16.10.2013 and the firm stands reconstituted with the party of First part, Sri.P.Arunkumar and the Second part Sri.S.Suresh Kumar being the legal heir of Sri.M.Srinivasan admitted into partnership with effect from 10.10.2013 and the partnership business is continued as a going concern by taking over all the assets and liabilities of the partnership firm including the factory land to the extent of 23.21 acres and the building built thereon in S.No.238, 236, 240/1, 250/1, 250/3A, 251/1, 239/1, 251/2, 239/2, 239/3, 247, 249/1, 241/2, 437/1 and 217/2, Mettamalai village & panchayat, Sattur Taluk, Kamarajar District.

5. It is thus clear that the respondent stepped into the shoes of his late father on 16.10.2013 with the demise

of his father. There is no interruption of the business of the partnership or of the terms of the partnership as can be seen from a combined reading of clause 16 of Deed dated 01.04.2003 and the clause extracted above in Deed dated 17.10.2013.

6. If at all any person could claim that there was no agreement between the parties for arbitration, it could only be the present petitioners, but not the respondent insofar as the respondent has been a partner throughout, both in deed of partnership dated 01.04.2003 as well as deed of partnership dated 17.10.2013. In this view of the matter, I am inclined to appoint an Arbitrator as prayed for to adjudicate upon the disputes inter se the parties.

7.I, thus, appoint Mr.S.Rajeswaran, Retired Judge of this Court, No.AA-67, I street, Near Rountana Nalli Silks, Annanagar East, Chennai- 600 040 (Mobile No. 9444390952), as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. He may, after issuing notice to the parties and upon hearing them, endeavour to pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in

accordance with the Madras High Court Arbitration Rules.

8.This petition is ordered only with respect to the first petitioner and the same is dismissed as regards the second petitioner, who would not be covered under the ambit of clause 16 of Deed of Partnership dated 01.04.2003. Parties to bear their own costs.

sd/.A.S.M.J
08.08.2017

//Certified to be a true copy//

Dated this the day of 2017

MK 10/11/2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.