

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.12.2017

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. No.326 of 2017

V.Bharanitharan

.. Petitioner

-VS-

1.M/s.Reeva Engineering,
rep. by its Managing Partner V.Gopal,
Coimbatore-641 062.

2.V.Gopal

3.M.Indira

.. Respondents

Prayer: Petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 to appoint an impartial and independent Arbitrator in terms of Clause 17 of the Deed of Partnership dated 13.08.2010 between the petitioner and the respondents.

For Petitioner : Mr.R.Nalliyappan for
Mr.A.Deivasigamani

For Respondents : Mr.S.Kumaresan for
Mr.A.Gokulakrishnan

ORDER

This petition is filed seeking the appointment of an Arbitrator in terms of Clause 17 of Partnership Deed dated 13.08.2010 between the parties.

2.The petitioner and the second respondent had entered into a partnership under deed dated 13.08.2010 for carrying on the business of manufacture of motors and pumps under the name and style of 'Reeva Engineering', arrayed as the first respondent in this petition. The third respondent is the wife of the second respondent, inducted under a deed of re-constitution of partnership dated 27.11.2015.

3.Mr.R.Nalliyappan, learned counsel appearing for the petitioner would state that disputes arose in the conduct of the business. On 07.12.2015, the petitioner, according to the learned counsel, was coerced into exiting the Firm and executing a Release Deed. The business of the firm has since been taken over and is being run by an entity by the name of Vahinie Engineering. Since the petitioner is entitled to his share of the assets of the firm in terms of Article 14 of the Deed of Partnership, he requested the settlement of accounts vide notice dated 13.10.16. Since the respondents were not forthcoming to settle the petitioners' dues, the arbitration clause was invoked. The petitioner thereafter unilaterally appointed an arbitrator

for resolution of the disputes. However the respondent expressed serious objection to the proceedings and the Arbitrator closed the proceedings directing the petitioner to approach the High Court for appropriate orders.

4. Mr.S.Kumaresan for Mr.A.Gokulakrishnan, learned counsel for the respondents would, at the outset, argue that the petitioner has suppressed material which compromises the very maintainability of this petition. The petitioner has filed two Original Suits in O.S. Nos.875 of 2016 and 903 of 2016 before the Subordinate Judge, Coimbatore and the District Munsif Coimbatore respectively and has obtained interim orders against the respondents in the latter. These facts however have not been disclosed in the petition. The non-disclosure is admitted in the rejoinder, though the petitioner would maintain that there has been no intentional suppression. There are various other allegations and counter allegations made by the parties. The counter, filed along with 19 annexures, lists eight release deeds that have been executed by the parties inter se when a mediation/settlement was being negotiated between them. The counter and rejoinder reveal that serious disputes exist between the parties and cases filed by both against each other are pending before the civil as well as criminal courts.

5. The prayers raised in O.S.No.875 of 2016 are as follows:

(a) to set aside the release deed dated 15.12.2015 and registered as Document No.2857/16 on the file of the Sub Registrar of Sulur executed by the plaintiff in favour of the first defendant.

(b)directing the second defendant bank to reject the release deed dated 15.12.2015 and registered as Document No.2857/2016 on the file of the Sub Registrar of Sulur as it is fabricated document and cannot be considered for granting any loan and cancel to loan sanctioned based on the said release deed.

(c)directing the second defendant bank not to grant any loan to the partnership firm M/s.Revaa Engineering and disburse money without the participation of the plaintiff as one of its partners.

(d)directing the first defendant to pay the cost and pass such further suitable orders and render justice for permanent injunction restraining the defendants or their men and agents or any persons claiming through them from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property in any manner whatsoever.

(e)pass such further or other orders which may deem fit and appropriate in the circumstances of the above case and render justice.

6.The prayers extracted above show that the disputes raised before the Civil Court are comprehensive and an adjudication and disposal thereof would result in the determination of all rights as between the parties in relation to the partnership firm and its business. It also appears that an order of injunction has been obtained by the petitioner in O.S.No.903 of 2016, wherein, the prayer is for a permanent injunction and for appointment of receiver. These facts have been omitted to be stated by the petitioner in the present petition.

7.It seems evident that the petitioner has been riding two horses, agitating essentially the same disputes before two fora for resolution. Though Clause 17 of the partnership deed provides for arbitration as the preferred method of resolution of disputes arising

<http://www.judis.nic.in> from the partnership deed or any other matter relating to the Firm, the

Petitioner has chosen to approach the civil courts for resolution of the disputes. Having done so, the question that arises before me is whether the petitioner can be permitted to pursue the matter in arbitration as well.

8. The Supreme Court, in the case of *(Sukanya Holdings Pvt Ltd vs Jayesh H Pandya) and another* (2003) 5 SCC 531 considered the provisions of section 8 of the Act, specifically sub-section (3) thereof, which permits proceedings for arbitration to commence notwithstanding the pendency of proceedings before a judicial authority. The question that came up for consideration before the Bench was whether parallel proceedings could be taken up both before the civil court as well as in arbitration. The petitioner had filed a suit claiming various reliefs similar/identical to those sought in arbitration against the parties to the agreement as well as third parties. The petitioner urged the reference of the disputes to arbitration in so far as such disputes arose from the agreement and related to the parties to the agreement. The respondent resisted the reference to arbitration on the grounds that the petitioner had already raised the same issues in the suit and that some of the parties to the petition under section 11 were not parties to the arbitration agreement. The submissions of the petitioner were rejected by the Bench holding that '*Secondly, there is no provision in the Act that when the subject matter of the suit includes subject matter of the arbitration agreement as well as other disputes, the matter is required*

to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject matter of the suit to the arbitrators.' In conclusion, the Bench held thus:

The next question which requires consideration is even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act? In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action that is to say the subject matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject matter of an action brought before a judicial authority is not allowed.

Secondly, such bifurcation of suit in two parts, one to be decided by the arbitral tribunal and other to be decided by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums.

9. Moreover, the petitioner has undoubtedly suppressed the fact of pendency of the two civil suits filed by him against the same respondents as in this petition and this is also a factor to be held against him. As regards the allegation of the petitioner that Release Deed dated 7.12.16 is itself a fabricated document, the respondent would point out that the factum of settlement between the parties has been relied upon by the petitioner himself in his letter to the bank dated 03.12.2015 which fact is not disputed by the petitioner. These are questions that have a bearing on the resolution of the entire dispute between the parties. The cause of action has to be seen as a whole and cannot be truncated so as to bifurcate only the settlement of accounts as a separate dispute to be resolved by reference to arbitration.

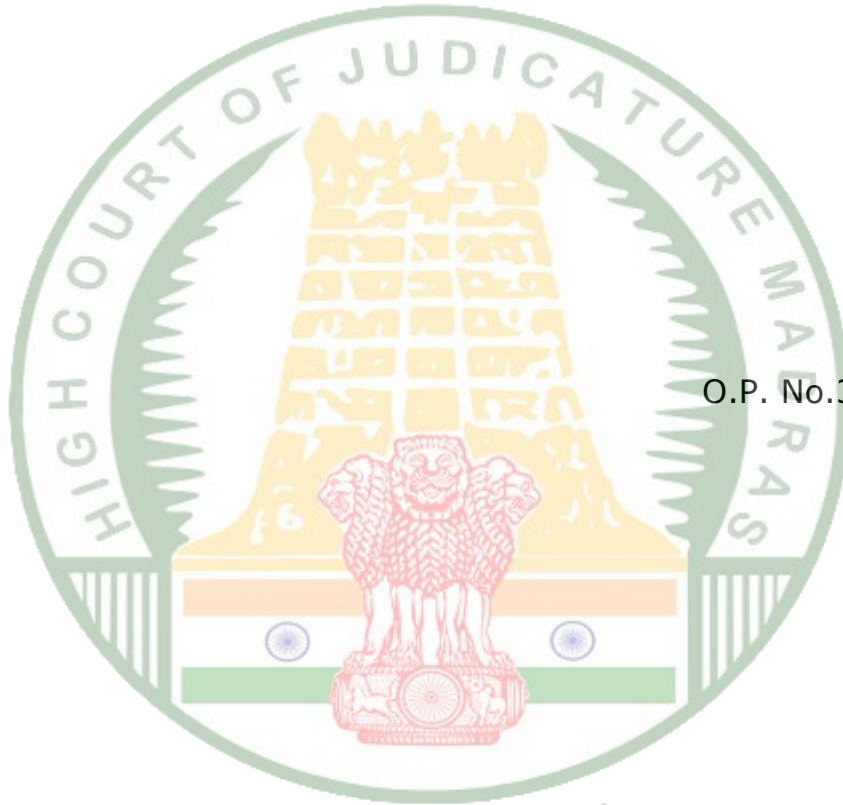
10. I dismiss this petition without however any order as to costs. Needless to say, the dismissal of this petition would not stand in the way of the parties seeking appropriate order from the Civil Courts relating to the settlement of amounts inter se and in the light of the conclusions to be arrived at by the Courts in the suits filed.

11.12.2017

vga/msv/msr

Dr.ANITA SUMANTH,J.

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