

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.11.2017

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. No.704 of 2017

- 1 M.Jangaiah
Flat No.202 Satyadev Enclave
Hasthinapuram
R.R.District Hyderabad-74. Petitioner

Vs

- 1 G.Bhaskar Reddy
2/32 Kammaguda Village
Post Turkayamjal
Sagar Road Abdullapurmet Mandal
Beside Rokkam Sathireddy Function Hall
R.R.District Hyderabad-501 510.
- 2 S.Masthan Reddy
No.244 Govindappanayakan Street
Near Seven Wells Market
Chennai-600 001.
- 3 C.Sivasankar
No.11 Kanniappan Street
Reterri
Chennai-600 099.
- 4 S.Narasimhulu
No.6 Mariammal Nagar
Puzhal Kavangarai
Chennai-600 066.
- 5 K.Jayaramaiah
11/51 Flat No.62

Telephone Colony
Road No.2 Hyderabad.

6 M.Yadagiri
Village Akuthotapalli
Amangal Mandal
R.R.District, Telangana.

..... Respondents

Prayer: Petition filed under Section 11 (4) and (5) of the Arbitration & Conciliation Act, 1996 for the appointment of Arbitrator to arbitrate upon the disputes that have arisen between the parties herein relating to dissolution of partnership firm "Jai Balaji Transport".

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.H.Mubarak Jan

ORDER

This application is filed in terms of Section 11 of the Arbitration and Conciliation Act, 1996 (in short, 'Act') for the appointment of Arbitrator.

2.Heard Mr.Adithya Reddy, learned counsel for the petitioner and Mr.Mubarak Jan, learned counsel for the respondent.

3.The preliminary objection raised by the respondents is that clause 21 of the Partnership Deed dated 01.12.2011 providing for the settlement of disputes specifically requires the parties to adopt reasonable and fair means and methods to resolve disputes as between the parties. As such the respondents are unwilling to have the disputes referred to the Arbitrator for resolution. This objection does not merit consideration in the light of Clause 2 of the Deed, extracted below, to the effect that the Partnership is one at will of the parties.

*'2. Commencement and Duration:
The Partnership has commenced toady i.e.
1.12.2011 and it shall be one at will.'*

4. Section 43 of the Indian Partnership Act provides for the dissolution of a partnership at will and reads as under;

'43. Dissolution by notice of partnership at will.

(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.'

5. As such the parties have agreed that the partnership shall be one at Will and the dissolution sought under section 43 of the Partnership Act is in accordance with law as well as the intentions of the parties. This objection is thus rejected.

6. The respondents would then pray that proceedings for arbitration be conducted at Hyderabad pointing out Clause 4 of the Deed that provides for the place of business to be Chennai, Guntur, Vijayawada or Hyderabad. Mr. Adithya Reddy is agreeable to the suggestion.

7. I appoint, by consent of parties, Justice.Nooty Rama Mohana Rao residing at Plot No.3A Huda Enclave, Aswini Layout, Road No.70 (Near Andhra Jyothi Newspaper office), Journalist colony, Jubilee Hills, Hyderabad 500 096 (Mobile No.07032048888) as Arbitrator to enter reference and adjudicate upon the disputes interse the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of this order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses that shall be borne by both parties equally. By

consent of parties, proceedings for Arbitration shall be, at Hyderabad or any venue as decided by the learned Arbitrator in consultation with the parties.

8.The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

msv

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Dr.Anita Sumanth, J.

msv



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