

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

ARBITRATION APPLICATION No.52 OF 2017

ORDER:

This is an Application seeking appointment of an Arbitrator and that due measure be taken under sub-sections (5) and (6) of Section 11 of the Arbitration and Conciliation Act, 1996; for short, "the Act".

2. Heard learned counsel for parties.

3. The applicants are parties 6 and 7 to the transaction evidenced by Ex.P.2, which is described as a Partnership Deed, in that document. The substance of that Deed relates to running of a cinema theatre. Clause 7 of that Deed provided for sharing profit and loss in terms of which the applicants were given entitlement to 7.5% each out of the profits with no share of loss. The applicants were minors when that Partnership Deed was entered into on 05.02.2004, going by the recitals of that document. They now stand by it and seek relief through arbitration, touching the affairs of business and profits of the partnership.

4. The respondents have contended that no dispute, which is sought to be referred for arbitration, is delineated in the application and there is no ground for appointment of an arbitrator as sought for. This plea does not stand having regard to different materials on record as Annexures, along with the pleadings, which unequivocally show that disputes exist between the parties. This issue cannot also be decided in this application since that itself is a matter for arbitration, more particularly because, even as between the parties, there are judicial orders issued under Section 9 of the Act, including in appellate jurisdiction.

5. An application under Section 9 of the Act as A.O.P.No.17 of 2017 filed before the XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District, at

Malkajgiri, at the instance of one of the applicants stands allowed through order dated 18.07.2017, directing that no third party charge shall be created over the subject property. That is stated to be now the subject of an Appeal before this Court as C.M.A.No.1028 of 2017, in which also there is an interlocutory order. These facts are shown through additional documents filed by the applicants before this Court on 04.01.2018.

6. The documents which are annexed as Exs.P.15, P.16 and P.17 clearly show that disputes between the parties exist in relation to the transaction evidenced by the document, dated 05.02.2004, which stands with the nomenclature 'Partnership Deed'. That document is Ex.P.2. I have made a cautious approach in referring to that document without expressing any particular judicial view as to whether it amounts to a partnership or otherwise, in view of certain contentions raised by the respondents as to whether it constitutes a partnership or otherwise.

7. The dispute between the members of a partnership including the question as to whether the partnership could be dissolved through an award of an Arbitrator has been answered in the affirmative by the Hon'ble Supreme Court in **V.H.Patel & Company vs. Hirubhai Himabhai Patel**¹.

8. The existence of the partnership and the rights and liabilities arising out of such transaction are also matters, which are to be considered through arbitration having regard to Clause 21 of Ex.P.2, document, which reads as follows:-

"21. That if any time, any dispute, doubt or question shall arise between the partners or their representatives either on the construction of these presents, or respecting the accounts transactions, profits or losses of the Partnership business or otherwise in relation to the Partnership then every such dispute, doubt or question shall be referred to arbitrators chosen by each of

¹ (2000) 4 SCC 368

the Partners and the representatives of their umpire to be appointed in the manner provided by law and such reference shall in all respects, as to the made and consequences there at confirm to the provisions in that behalf contained in the Arbitration Act, 1940 or any statutory modification thereof.”

(emphasis supplied)

In the light of the afore-quoted provision, which is the arbitration agreement, any dispute on the construction of terms of Ex.P.2, document, or doubt or question in relation thereto, is a matter for arbitration. Any other view will deprive the efficacy of Clause 21 of Ex.P.2 as an ‘arbitration agreement’ as defined in Section 2(e) of the Act with reference to Section 7 of the Act.

9. The respondents have not appointed their arbitrator and they have not accepted the arbitrator appointed by the applicants. Therefore, this Court is to take the requisite measure to appoint an Arbitrator and facilitate arbitration of all disputes between the parties.

10. For the aforesaid reasons, this Arbitration Application succeeds and is eligible to be allowed.

11. In the result, this Arbitration Application is allowed appointing an Arbitrator.

12. Accordingly, Sri N.R.L.Nageswara Rao, former Judge of this Court, is appointed as Arbitrator to arbitrate on the disputes between the applicants and the respondents, including the claims and counter claims of both sides. The said Arbitrator shall enter on reference and proceed with, as enjoined by the Act. No order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

20.09.2018
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