

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : **04.04.2019**

CORAM

THE HONOURABLE Mr.JUSTICE **R. SURESH KUMAR**

O.P. No.119 of 2019

1. Mr.S.Elumalai .. Petitioner

-VS-

Mr.K.Manoharan .. Respondent

Prayer: Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to constitute an Arbitral Tribunal for resolving the various disputes and differences that have arisen between the petitioner and the respondent from and out of the operation of Agreement in the form of Partnership Deed dated 09.01.2010 and Article 18 of the said Agreement and direct the respondent to pay costs of this petition.

For Petitioner : Mr.K.Ashok Kumar

For Respondent : No Appearance

ORDER

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This Original Petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 for the prayer to appoint an Arbitrator to constitute an Arbitral Tribunal for resolving the various disputes and differences that have arisen between the petitioner and

the respondent from and out of the operation of Agreement in the form of Partnership Deed dated 09.01.2010 and Article 18 of the said Agreement.

2. It is the case of the petitioner that, the petitioner and the respondent are partners in the partnership firm and the partnership firm was formed pursuant to the Partnership Deed dated 09.01.2010. In the said Partnership Deed, there is a Clause at Clause 18 under which, if there is a difference of opinion between the partners, the same may be referred to an Arbitrator and the decision of the Arbitrator would be final.

3. In this regard, it is the further case of the petitioner that, the petitioner has sought rendition of accounts from the respondent, which the respondent has failed to submit, therefore there arose a dispute in this regard between the parties. Thereafter, the petitioner has sent a legal notice to the respondent on 10.10.2018 seeking rendition of accounts which has not been responded by the respondent, despite the said notice has been served on him.

4. Since there has been no response from the petitioner, the petitioner has chosen to send yet another request through his

letter on 03.12.2018 whereby, he communicated that, he has nominated an Arbitrator to resolve the dispute between the parties and he sought for the consent of the respondent for referring the matter to the said nominee Arbitrator.

5. Even this notice has not been responded by the respondent, therefore the petitioner has filed this present Original Petition with the aforesaid prayer.

6. In this matter, notice has been ordered on 14.02.2019, where private notice also was permitted to the applicant. Accordingly private notice has been sent to the respondent and in this regard in order to prove the service, the petitioner has filed the postal tracking record by way of affidavit of service, according to which, the private notice sent by the petitioner has been served on the respondent on 18.02.2019.

7. In view of the completion of the service against the respondent, the name and the full address of the respondent has been shown in the cause list, however, when the case is called today, no one is appearing for the respondent.

8. Having considered the case of the petitioner and after having gone through the materials placed before this Court, this Court has come to the conclusion that, there has been a written agreement between the parties i.e., the petitioner and the respondent, which is called Agreement in the form of Partnership Deed, dated 09.01.2010 wherein, there is an Arbitration Clause under Clause 18 of the Agreement. Invoking the said Arbitration Clause, notice has already been given by the petitioner on 03.12.2018 indicating the nominee Arbitrator on the side of the petitioner. Despite the notice having been served on the respondent, since the respondent has not come forward either to accept the nominee Arbitrator of the petitioner or suggest his own nominee, this Court is of the view that, it is a case where Section 11 (5) of the Arbitration and Conciliation Act, 1996, can be very well invoked. Accordingly, this Court is inclined to pass the following order:

"i) In this regard, Mr.R.Anbukarasu, learned Advocate having office at Madras Bar Association, High Court Buildings, Chennai-600 104 (Mobile No: 94440 77689) is appointed as a Sole Arbitrator to resolve the dispute arising out the Agreement, dated 09.01.2010 called "Partnership Deed" between the parties.

(ii) The learned Arbitrator shall enter upon the reference immediately and resolve the issue raised before him at the earliest by passing the final Award.

iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses, which shall be borne by both the parties equally."

9. With these directions and appointment of Arbitrator, this Original Petition is ordered accordingly.

04.04.2019

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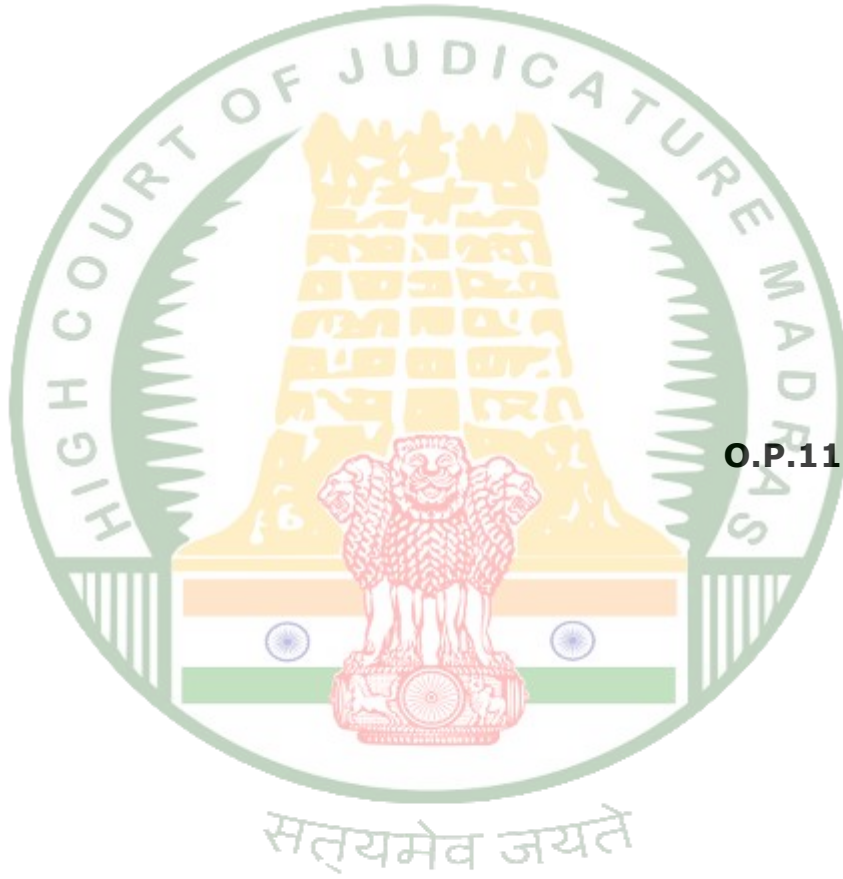
Index:Yes / No
Speaking / Non speaking order



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R.SURESH KUMAR, J

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