

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.07.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Original Petition Nos.866 and 868 of 2015O.P.No.866 of 2015

S.Rukmini Reddy,
W/o.Nileshkumar Dhayade,
D.No.38, Kaveri Street,
Besant Nagar, Chennai - 600 090.
Tamil Nadu State.

Rep. by her Power of Attorney
S.Raghukumar Reddy
D.No.38, Kaveri Street,
Besant Nagar, Chennai - 600 090,
Tamil Nadu State.

Petitioner

...
versus

- 1.S.Aruna
- 2.Suhasini
- 3.S.Ramana Reddy (Deceased)
- 4.K.Devasena Reddy
- 5.S.Sujana Reddy
- 6.P.Sunil Kumar
- 7.T.Seetharathnamma (Deceased)
- 8.P.Lokesh Kumar
- 9.P.Aparna
- 10.Sri Sai Agency,
Rep. by its Manager Sri S.Prabhakar Reddy,
No.1 & 2, 2nd Floor,
Chamiers Road, 1st Lane,
Teynampet, Chennai - 600 018.
- 11.Mr.Justice S.K.Krishnan, Rtd.,
Arbitrator,
249, Mogappair West,
Chennai - 600 037.

12.S.Prabhakar Reddy
 13.K.Jayaprada
 14.S.Raghu Kumar Reddy
 [R-12 to R-14 are brought
 on record as LR's of 3rd respondent
 as per order dated 30.01.2019
 in A.No.826 of 2019]
 15.Penna Suhasini
 16.Tikkavarapu Hemalatha
 17.Thikavarapu Sudhakar
 18.Tikkaverapu Dileep
 19.Tikkaverapu Madhusudan Reddy
 20.Tikkaverapu Sailaja
 21.Tikkaverapu Venkata Narahari
 22.Malapati Lakshmi
 [R-15 to R-22 are brought
 on record as LR's of 7th respondent
 as per order dated 10.04.2019
 in A.No.2645 of 2019].

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Respondents

PRAYER: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 26.02.2015 made in Arbitration Case No.2 of 2014 on the file of the 11th respondent / Arbitrator.

For Petitioner : Mr.S.R.Raghunathan
 For Respondents : Mr.Udayakumar

O.P.No.868 of 2015

S.Jyothi Reddy,
 W/o.S.Raghukumar Reddy,
 D.No.38, Kaveri Street,
 Besant Nagar, Chennai - 600 090.
 Tamil Nadu State.

...

Petitioner

versus

1.S.Aruna
 2.T.Seetharathnamma (Deceased)
 3.S.Ramana Reddy (Deceased)

- 4.Suhasini
- 5.S.Naveen Reddy
- 6.V.Manjula
- 7.P.Sunitha
- 8.K.Devasena Reddy
- 9.S.Dayakar Reddy
- 10.M/s.Srinivasa Dyes Services (P) Ltd.,
No.1 & 2, 2nd Floor,
Chamiers Road, 1st Lane,
Teynampet, Chennai - 600 018.
- 11.Sri Srinivasa Colours,
Rep. by its Manager,
S.Naveen Reddy,
No.1 & 2, 2nd Floor, Chamiers Road,
1st Lane, Teynampet,
Chennai - 600 018.
- 12.Mr.Justice S.K.Krishnan, Rtd.,
Arbitrator,
249, Mogappair West,
Chennai - 600 037.
- 13.S.Prabhakar Reddy
- 14.K.Jayaprada
- 15.S.Raghu Kumar Reddy
- [R-13 to R-15 are brought
on record as LR's of 3rd respondent
as per order dated 30.01.2019
in A.No.823 of 2019]
- 16.Penna Suhasini
- 17.Tikkavarapu Hemalatha
- 18.Thikavarapu Sudhakar
- 19.Tikkaverapu Dileep
- 20.Tikkaverapu Madhusudan Reddy
- 21.Tikkaverapu Sailaja
- 22.Tikkaverapu Venkata Narahari
- 23.Malapati Lakshmi
- [R-16 to R-23 are brought
on record as LR's of 2nd respondent
as per order dated 10.04.2019
in A.No.2644 of 2019].

...

Respondents

PRAYER: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 26.02.2015 made in Arbitration Case No.1 of 2014 on the file of the 12th respondent / Arbitrator.

For Petitioner : Mr.S.R.Raghunathan
For Respondents : Mr.Udayakumar

COMMON ORDER

These Original Petitions have been filed by the petitioners to set aside the arbitral award dated 26.02.2015 made in Arbitration Case Nos.1 and 2 of 2014 on the file of the 11th and 12th respondent / Arbitrator respectively.

2. The brief facts leading to file these Original Petitions, is as follows;

2.1. The claimants and respondents 1 to 9 are the partners of the firms, under the name and style of "Sri Sai Agency" and "Sri Srinivasa Colours" respectively. The said partnership firms were established in the year 2000. As there is some dispute arise between the partners, the suits in C.S.Nos.425 and 426 of 2012 have been filed for dissolution of firms. Since there is a clause in the partnership deed to refer the matter for arbitration, the dispute has been referred to the learned Arbitrator.

2.2. It is the contention of the claimants that, the partner, namely, Prabhakar Reddy has been managing the partnership firms from its inception by obtaining Power of Attorney from all the partners. He has been managing the partnership firms, as if it is his sole proprietary concern. Subsequently, his son was taking active part in the business. The respondents 1 to 3 in O.P.No.866 of 2015 and respondents 1, 3, 4 and 5 in O.P.No.868 of 2015 along with Prabhakar Reddy, conspired together and swindled the profits from the partnership firms, besides caused wrongful loss to the partnership firms and also wrongful gain at the expenses of the firms.

2.3. When the other partners were questioned, they unilaterally tried to expel the claimants from the partnership firms which they have no right to do so. However, it is informed by the respondents in this regard that the claimants were expelled from the partnership firms in the meeting held on 01.12.2010. According to them, such expulsion is contrary to provision of law. Therefore, issued a notice to dissolve the firms and also referred the dispute to the learned Arbitrator admitting that the claimants are partners in the firms and having 10% share.

2.4. It is the contention of the respondents that the claimants are not cooperating in the business activities, they creating problems including functioning of the firms and by the majority decision of the members, they were expelled from the partnership firms.

2.5. The learned Arbitrator has framed the following issues in Arbitration Case No.2 of 2014 (O.P.No.866 of 2015);

- "1. Whether "SRI SAI AGENCY" is a partnership at Will?
2. Whether a partner can be expelled from the firm by any majority of the partners?
3. Whether alleged removal of the claimant from the partnership firm in the meeting held on 01.12.2010 is valid in the eye of law?
4. Whether the claimant is continued to be the partner of the firm inspite of alleged removal on 01.12.2010 and had every right to dissolve the partnership firm by issuing a notice of dissolution under Section 43 of the Partnership Act?
5. Whether notice of dissolution dated 24.09.2011 issued by the claimant is valid?
6. Whether the partnership firm was dissolved with effect from 28.09.2011?
7. Whether respondents 1, 2, 3 and 9 are guilty of misconduct as alleged in the claim?
8. Whether the claimant is entitled to the reliefs prayed for in claim statement?
9. To what relief if any?"

2.6. The learned Arbitrator has also framed the following issues in Arbitration Case No.1 of 2014 (O.P.No.868 of 2015);

- "1. Whether "SRI SRINIVASA COLOURS" is a partnership at Will?
2. Whether a partner can be expelled from the firm by any majority of the partners?
3. Whether alleged removal of the claimant from the partnership firm in the meeting held on 01.12.2010 is valid in the eye of law?
4. Whether the claimant is continued to be the partner of the firm inspite of alleged removal on 01.12.2010 and had every right to dissolve the partnership firm by issuing a notice of dissolution under Section 43 of the Partnership Act?
5. Whether notice of dissolution dated 24.09.2011 issued by the claimant is valid?
6. Whether the partnership firm was dissolved with effect from 28.09.2011?
7. Whether respondents 1, 3, 4 and 5 are guilty of misconduct as alleged in the claim?
8. Whether the claimant is entitled to the reliefs prayed for in claim statement?
9. To what relief?"

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2.7. The learned Arbitrator has held that the issue no.1 was in favour of the claimants, whereas issue nos.2 to 4 went against the claimants holding that the expulsion of the claimants from the partnership firms, is correct. As against which, the present Original Petitions have been filed.

3. The learned counsel appearing for the petitioners mainly contended that a partner may not be expelled from a firm by any majority view of the other partners. He further submitted that Section 33 of the Indian Partnership Act, 1932, clearly mandates that there must be contract between the partners to expel the members from the firm that too proving a good faith by taking such decision, admittedly there is no such terms agreed between the partners. Therefore, expulsion is certainly contrary to law and hence, the award is liable to be set aside. In support of his submissions, the learned counsel has relied upon the following decisions;

- "1. Ramnarayan and others vs. Kashinath Jagnarain and another reported in AIR 1954 Pat 53
2. Dr.S.Vel Aravind and another vs. Dr.Radhakrishnan and others reported in (2018) 4 MLJ 468
3. Mahendra N.Thakkar vs. Yogendra N.Thakkar and others reported in 2008 SCC Online Bom 772
4. Santiram Mullick vs. Hiranmoy Bagchi & Others reported in 1990 SCC Online Cal 291
5. Mushtaque & Co. vs. Commissioner of Income-Tax, Mysore reported in 1970 SCC Online Kar 245
6. MMTC Limited vs. Vedanta Limited reported in (2019) 4 SCC 163
7. Associate Builders vs. Delhi Development Authority reported in (2015) 3 SCC 49
8. Managing Director, Tamil Nadu Fisheries Development

Corporation Limited vs. K.Subramanian reported in 2019 SCC Online Mad 2094"

4. The learned counsel appearing for the respondents would submit that the petitioners are not allowed the respondents to run the business activities, the majority members had been taken care of the business and the claimants were rightly expelled from the partnership firms and hence, prayed for dismissal of these Petitions.

5. I have perused the arbitral awards passed by the learned Arbitrator.

6. Originally, the dispute has been referred to the learned Arbitrator from this Court, as there is a clause in the agreement to refer the matter for arbitration. The suit was originally filed for dissolution of firms and in fact, the claimants are also raised the same for dissolution of firms.

7. It is well settled law that dissolution of the firm can be made only by invoking provisions under Sections 41 to 44 of the Indian Partnership Act, 1932, and absolutely there is no dispute in this regard. Admittedly, when there are terms agreed between the parties to expel any member by the

majority, the question of deciding good faith in taking such decision by the other members will arise as per Section 33 of the Indian Partnership Act. Therefore, as long as there is no provision either in contract or in law, the learned Arbitrator holding that the expulsion is correct. In my view certainly contrary to law and such award is certainly in violation of fundamental policy of Indian law, since it violates the substantive law of India. Such being the position, I am of the view that the award will certainly fall within the violation of fundamental policy of Indian law and also the patent illegality, the same must be interfered.

8. The learned counsel appearing for the petitioners relied upon the following judgments would make it clear that the partner cannot be expelled from the majority members of the partnership;

- "1. Ramnarayan and others vs. Kashinath Jagnarain and another reported in AIR 1954 Pat 53
2. Mahendra N.Thakkar vs. Yogendra N.Thakkar and others reported in 2008 SCC Online Bom 772
3. Santiram Mullick vs. Hiranmoy Bagchi & Others reported in 1990 SCC Online Cal 291
4. Mushtaque & Co. vs. Commissioner of Income-Tax, Mysore reported in 1970 SCC Online Kar 245 "

9. Having regard to the above position of law and there is no provision in the contract to expel the member, I am of view that the learned Arbitrator award confirming expulsion of the partner is liable to set aside. Accordingly, the award passed by the learned Arbitrator is set aside.

10. At this stage, the learned counsel appearing on both sides submitted that, among 3 members, the learned Arbitrators, namely, Hon'ble Mrs. Justice Chitra Venkataraman, Hon'ble Ms. Justice Prabha Sridevan and Hon'ble Mr. Justice D. Raju, any one of the Arbitrators may be appointed as Arbitrator. The learned counsel appearing for the respondents has also no objection to appoint any one of the Arbitrators from the above 3 members. Since the very issue itself with regard to the dissolution of firm, it must be decided by the learned Arbitrator and the decision has to be taken in pursuant to Section 48 of the Indian Partnership Act.

11. In such view of the matter, Hon'ble Mr. Justice D. Raju, No.20(39), Puram Prakasa Rao Road, Balaji Nagar, Royapettah, Chennai - 600 014, is appointed as an Arbitrator to adjudicate upon the dispute *inter se* parties raised in C.S.Nos.425 and 426 of 2012. The fees shall be fixed to the learned Arbitrator as per the Madras High Court Rules. The learned Arbitrator

shall endeavour to complete the proceedings within a period of three (3) months from the date of receipt of a copy of this order. The learned Arbitrator would decide the issue, without influencing any observation made by this Court.

12. With these observations, these Original Petitions are disposed of. However, there is no order as to costs.

24.07.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

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Copy to : The Hon'ble Mr. Justice D. Raju,
No.20(39), Puram Prakasa Rao Road,
Balaji Nagar, Royapettah, Chennai - 600 014.

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N.SATHISH KUMAR, J.,

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