

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.02.2019

Pronounced on : 28.05.2019

CORAM

THE HONOURABLE Mr.JUSTICE R. SURESH KUMAR

O.P. No.314 of 2018
and O.A.Nos.415 to 417 of 2018

1. L.M.Shantha Devi
2. L.M.Vinod
3. L.M.Karthik

Rep. by his Authorised Power of Attorney
Mr.L.M.Vinod
No.146, Wood Street,
Rutherford, New Jersey - 070 070.

.. Petitioners

-VS-

1. L.R.Sivaprasad
2. L.V.Uma Devi
3. L.V.Sanjay
4. L.V.Vijay

2 to 4 are legal heirs of
L.R.Visweshwara Rao
Old No.28, New No.91, Habibullah Road,
T.Nagar, Chennai - 600 017.

.. Respondents

Prayer: Petition filed to appoint a Sole Arbitrator to adjudicate the dispute between the petitioners and the respondents in accordance with Section 11 of the Arbitration and Conciliation Act.

For Petitioners : Mr.H.Karthik Seshadri
for M/s. Iyer and Thomas

For Respondents : Mr.V.R.Kamalanathan for R1

ORDER

This Original Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (herein after referred to as "The Act"), seeking for the relief of appointment of sole Arbitrator to adjudicate the dispute between the petitioners and the respondents.

2. The necessary facts which are required to be noticed, as projected by the petitioners, are as follows :

(i) The family business of the parties herein was run by the grand father of the petitioners as well as respondents 2 to 4 and father of the first respondent, one Late L.V.Ramiah along with his sons, L.R.Manohar, L.R.Visweshwara Rao and L.R.Sivaprasad.

(ii) The petitioners herein are the legal heir of L.R.Manohar, who died on 17.08.2010; that L.V.Ramaiah died as early on 31.08.2004. The respondents 2 to 4 are the legal heirs of L.R.Visweshwara Rao who died on 14.10.2017 . The first respondent is the youngest brother of that L.R.Manohar and L.R.Visweshwara Rao.

(iii) The father and three brothers, as referred to above, along with two others (who later retired) started a family business by way of partnership firm

called M/s. Yadalam & Company, which was established under the Deed of Partnership, dated 24.10.1984, where the father and three sons were partners. After the death of the father, L.V.Ramaiah on 31.08.2004, in accordance with the terms of Clause 14 of the partnership deed, since the firm was not to be dissolved on the death of any partner, accordingly, the said firm was reconstituted again by a partnership deed, dated 31.08.2004 entered into between the three sons, who are the brothers, namely L.R.Manohar, L.R.Visweshwara Rao and L.R.Sivaprasad.

(iv) Subsequently, that L.R.Manohar, who is the father of the second and third petitioners and the husband of the first petitioner herein died on 17.08.2010. Thereafter also the firm was reconstituted by a Deed of partnership, dated 17.08.2010 entered into between L.R.Visweshwara Rao and L.R.Sivaprasad. Though as per the said deed dated 31.08.2004, one of the petitioners was to be inducted into the partnership, however it is the claim and complaint of the petitioners that, none of the petitioners have been inducted as partner in the place of that L.R.Manohar, who died on 17.08.2010.

(v) It is the further case of the petitioners that, not only any one of the petitioners had not been inducted in to the newly reconstituted partnership firm in the year 2010 but also the two surviving partners, namely L.R.Visweshwara Rao and L.R.Sivaprasad had not come forward even to settle

the dues payable to the petitioners who are the legal heirs of L.R.Manohar, who was one of the partners in the firm with 1/3rd share.

(vi) In this context, it is further to be mentioned that, yet another family business by name M/s. Vinod Solvextracts Private Limited was incorporated on 05.07.1975, wherein also the brothers including the father of the second and third petitioners and the husband of the first petitioner was a shareholder / Director.

(vii) Therefore after the death of L.R.Manohar on 17.08.2010, even though the partnership firm was reconstituted, neither the petitioners have been inducted into the partnership firm nor the account had been settled in respect of them.

(viii) Therefore in this regard, attempts have been made by the petitioners side to settle the account amicably among the shareholders, i.e., with the respondents, especially with the first respondent who was empowered to deal with the firm as per the reconstituted partnership deed. In this regard, on 15.07.2013, the second petitioner had sent a request to his uncles, i.e., L.R.Visweshwara Rao and L.R.Sivaprasad to ensure transfer of shares in his favour.

(ix) For the said request made by the second petitioner, the first respondent had sent a reply on 24.07.2013, where among other things, he has stated the following :

"With the above facts I also, assure you that the legitimate share of your father will reach your family once all the above matters with regard to M/s.Yadalam is restored. Till such time I requested you to be patient and cooperate with us."

(x) Thereafter since nothing was forthcoming from the respondents, on 13.08.2013, the petitioners issued a legal notice to Visweshwara Rao and Sivaprasad (R1) for invocation of Arbitration Clause available in the partnership deed, i.e., Clause 13 of 2004 partnership deed, thereby suggested few names as probable Arbitrators and requested the respondents to suggest or approve any one of the names suggested or nominated by the petitioners as sole Arbitrator.

(xi) In response to the said notice, dated 13.08.2013, invoking Arbitration Clause, the first respondent has given a reply, dated 02.09.2013, where he has stated the following :

"Sub: Reply to your notice dated 13.8.2013

This has reference to your notice cited above sent to us on behalf of you clients, viz the legal heirs of late Shri L.R.Manohar.

In this connection we would like to inform you that the under signed was continuously on travel and came to know about your notice lately.

We wanted to consult our advocate and reply to your notice. Since our advocate is not in station and he is likely to come back only during the second week of this month, we request you to give three to four weeks time to reply your notice.

Hope you understand the situation and oblige accordingly."

(xii) Though this has been assured as stated above by the first respondent, it seems that, there had been no progress in settling the issue between the parties and in this regard, there had been number of communications from the petitioners side on various dates, i.e., on 19.09.2013, 14.11.2013, 01.11.2014, 15.02.2016, 11.03.2016, 12.04.2016, 14.05.2016, 04.07.2016, 05.07.2016, 06.07.2016, 07.07.2016, 15.07.2016, 25.07.2016 and 06.11.2017.

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(xiii) Though some of the communications have been responded or replied by the respondents, especially the first respondent, ultimately the issue between the parties were not resolved and therefore last such communication, dated 06.11.2017 was issued by the petitioners to the first

respondent.

(xiv) It is further to be noted that, one of the brother, i.e., L.R.Visweshwara Rao also died in 2017, therefore the respondents 2 to 4, who are the legal heirs of the said Visweshwara Rao have also been shown as party respondents herein.

(xv) Therefore the only surviving partner is the first respondent, i.e., L.R.Sivaprasad and at any rate, as per the clause available in the partnership deed, the partnership firm cannot be dissolved and it can only be reconstituted with the surviving partners and also by inducting any one of the legal heir to be named by them on behalf of the demised partner.

(xvi) Only in that circumstances, the grievance of the petitioners is that, they have neither been inducted as partners nor their accounts have been settled by the surviving partners especially by the first respondent, L.R.Sivaprasad.

(xvii) In this context, even though he had replied stating that, after consulting the lawyer, he would revert back and all the dues payable to L.R.Manohar, father of the second and third petitioner would come to them and thereafter also number of communications though had been exchanged between them, so far the issue had not been settled.

(xviii) Only under these circumstances, this Original Petition has been filed by the petitioners invoking Section 11 of the Arbitration and Conciliation Act, for seeking a direction from this Court appointing a sole Arbitrator to resolve the issue between the parties.

3. Mr.H.Karthik Seshadri, learned counsel appearing for the petitioners has relied upon the clause available in the partnership deed, especially the partnership deed, dated 31.08.2004 and 17.08.2010.

4. After the death of the father L.V.Ramaiah on 31.08.2014, the partnership was reconstituted with three sons, i.e., L.R.Manohar, L.R.Visweshwara Rao and L.R.Sivaprasad and as per the said reconstituted partnership, which commenced from 01.09.2014, all the three sons will have equal shares, i.e., each will have 1/3rd share. In the said partnership deed, dated 31.08.2004, under Clause 13, the following has been provided :

"All disputes between the parties hereto and / or their legal heirs relating to this partnership shall be referred to arbitration under the Indian Arbitration Act, as applicable on the date of reference."

5. Thereafter on the death of L.V.Ramaiah, who is the father of the

second and third petitioner and husband of the first petitioner, on 17.08.2010 again the partnership was reconstituted with surviving partners, namely L.R.Visweshwara Rao and L.R.Sivaprasad, where also there is a clause under Clause 13, which reads thus :

"All disputes between the parties hereto and / or their legal heirs relating to this partnership shall be referred to arbitration under the Indian Arbitration and Reconciliation Act, as applicable on the date of reference."

6. The learned counsel would further submit that, in the Memorandum of Association of the company called M/s.Vinod Solvextracts Private Limited, incorporated in the year 1975, under Clause 41 of the Memorandum of Association, the following has been provided :

"To agree to refer to arbitration and refer to arbitration, any disputes present or future between the company and any other company, firm or individual and to submit the same to arbitration in India or abroad either in accordance with Indian or any Foreign system of Law."

7. By relying upon these clauses available in the partnership deed as well as in the Memorandum of Association of the company, the learned counsel for the petitioners submitted that, there has been a clear clause

provides for Arbitration to settle the issues between the parties as well as their legal heirs. Therefore after the demise of the father of the second and third petitioner, i.e., L.R.Manohar in the year 2010, when the partnership was reconstituted on 17.08.2010, w.e.f 18.08.2010, normally as per Clause 12 of the earlier partnership deed, dated 31.08.2004, any one of the legal heir of L.R.Manohar should have been made as a partner. However since the same has not taken place, at least the surviving partners must come forward to settle the amounts towards the legal heirs of the said L.R.Manohar, i.e., the petitioners herein.

8. Though sincere attempts have been made by the petitioners side to settle the issue amicably and number of communications to that effect have been exchanged between the parties and at one point of time, the first respondent had sent a communication that, he will consult the lawyer and settle the issue, nothing was forthcoming from the first respondent, despite prolonged efforts taken by the petitioners side, which is evidenced from various communications exchanged between the parties till the year 2017.

9. Therefore only at this juncture, the learned counsel would submit that, the petitioners having no other option, approached this Court by invoking Section 11 of the Arbitration Act for appointment of sole independent Arbitrator to resolve the issue between the parties.

10. Therefore the learned counsel for the petitioners submits that, the prayer sought for herein can be allowed and in support of his contention, the learned counsel for the petitioners has relied upon the following two decisions of the Hon'ble Apex Court :

(i) Ravi Prakash Goel v. Chandra Prakash Goel, (2008) 13 SCC 667

(ii) Emm Enn Associates v. Commander Works Engineer, (2016) 1 SCC 61

11. On the side of the respondents, especially the first respondent who filed the counter affidavit, Mr.V.R.Kamalanathan, learned counsel appearing for the first respondent would submit that, no doubt the family business was started by father and three sons, thereafter the father died and the firm was reconstituted in the year 2004 and subsequently one of the brother, i.e., the husband of the first petitioner and father of the second and third petitioner herein also died in the year 2010. Thereafter the firm was further reconstituted and in this regard there is a clause available, i.e., under Clause 12 that, merely because one of the partner dies, the partnership will not got dissolved, instead, it would be reconstituted with the surviving partners and in this context any one of the legal heir of the deceased partner can also be inducted as a partner.

12. In this context, the learned counsel for the respondents submits that, after the death of L.R.Manohar, when the partnership was reconstituted on 17.08.2010 with surviving partners, i.e., L.R.Visweshwara Rao and the first respondent herein, the very same petitioners, though had been given chance of becoming partners, they have not shown any interest and they expressed their undesire to get inducted to the partnership.

13. The learned counsel also would submit that, in so far as the settlement of accounts is concerned, though the respondents were ready and willing to settle the same, only the petitioners had not shown any interest and in this regard, it is the further submissions of the learned counsel for the respondents that, after such a long time, the petitioners cannot invoke Section 11 of the Arbitration Act for appointment of Arbitrator, as such a move is not justifiable and in fact this O.P itself is not maintainable before this Court. In support of his contention, the learned counsel for the respondents relied upon the following decisions :

(i) State of Goa v. Western Builders, (2006) 6 SCC 239

(ii) Jagdish Chander v. Ramesh Chander and others, (2007) 5 SCC 719

(iii) Indus Ind Bank Ltd., v. Mulchand B.Jain and others, 2013 (2) CTC

533

(iv) Vimal Kishor Shah v. Yajesh Dinesh Shah and others, (2016) 8 SCC

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14. I have considered the said rival submissions made by the learned

respective counsel appearing for the parties and have gone through the materials placed before this Court.

15. The admitted facts are that, the father and three sons started a partnership firm in the year 1986 by way of a partnership deed dated 16.08.1986 (after the third party partner retired), where the father as well as three sons are having the shares. Under the partnership, they established a business called "Yadalam and Company". Clause 5 of the Partnership deed dated 16.08.1986, with regard to the share capital reads thus :

"5. The capital of the partnership shall be Rs.2,15,000/- which shall be contributed by the parties hereto as follows :

- | | |
|-----------------------|-----------------|
| 1. L.V.Ramaiah | : Rs.1,00,000/- |
| 2. L.R.Manohar | : Rs. 50,000/- |
| 3. L.R.Visweswara Rao | : Rs. 50,000/- |
| 4. L.R.Sivaprasad | : Rs. 15,000/- |

Rs.2,15,000/-

The capital contribution of parties shall be adjusted from out of the amounts lying to their credit in the books of the old partnership."

16. Thereafter, L.V. Ramaiah, i.e., father died on 31.08.2004. Because of the death of the father, all the three sons reconstituted the partnership on

31.08.2004, by way of a reconstituted partnership deed, where all the three sons continued to be partners with equal share, i.e $1/3^{\text{rd}}$ share. Thereafter the father of the second and third petitioner and husband of the first petitioner L.R.Manohar died on 17.08.2010 which necessitated to reconstitute the partnership once again with surviving partners, i.e, other two brothers namely Visweshwara Rao and Sivaprasad, accordingly, the partnership was again reconstituted on 17.08.2010.

17. It is to be noted that, in the original partnership under Clause 5 as referred to above, the father Ramaiah was having prime share, 2 sons were having equal to 50% of the share of their father and the third son was having a very limited share.

18. Be that as it may, subsequently after the death of the father, when the partnership was reconstituted on 31.08.2004, all the three brothers was having the capital of equal share, i.e., $1/3^{\text{rd}}$ by each partner and when one of the partner dies and as per the existing clause, i.e., clause 12 of the partnership deed, dated 31.08.2004 when the surviving partners reconstituting the partnership, they must have given a chance to the petitioners to become partner of the firm as legal heir of the deceased partner, L.R.Manohar.

19. In this context, there has been dispute between the parties, as the petitioners claim that, they have not been inducted as partner, whereas the respondents, especially the first respondent has made a statement saying that, though such a chance was given, the petitioners did not come forward to become the partners.

20. Secondly the issue was, assuming that the petitioners have not expressed their desire to become the partners, when it was reconstituted on 17.08.2010, then whatever the due payable to the petitioners should have been paid to the petitioners and in this regard, there should have been a complete settlement of accounts.

21. In this context, it is to be noted that, pursuant to the letter, dated 05.07.2013 issued by the petitioners side, the first respondent herein on 24.07.2013 has given a detailed reply and the relevant portion has already been extracted herein above, where he has stated that, the legitimate share of the father of the second and the third petitioner would reach to the family of the petitioners.

22. However since nothing was acted upon immediately, on behalf of the petitioners, legal notice was issued on 13.08.2018, where Clause 13 of the Deed, i.e., Arbitration Clause was invoked by the petitioners side.

23. However in response to the same, the first respondent replied on

02.09.2013, expressed that they wanted to consult their lawyer and thereafter they would revert back.

24. After these communications, there had been number of communications as has been quoted above and last such communication was on 06.11.2017.

25. Despite the petitioners having already invoked the Arbitration Clause for appointment of Arbitrator and since nothing was materialised, they approached this Court by filing this Original Petition.

26. The legal issue raised by the respondents side was that, under Clause 13 of the Partnership Deed, dated 31.08.2004 or 17.08.2010, the petitioners cannot now invoke Section 11 of the Arbitration Act and in this context, the learned counsel for the respondents has relied upon some of the decision as has been referred to above.

27. In (2006) 6 SCC 239, **State of Goa v. Western Builders**, it is the decision where it was held that, Limitation Act, especially Section 14 of the Limitation Act would be applicable to Arbitration Proceedings under the 1996 Act.

28. Here in the case in hand, in view of the factual matrix, as it is a continuing process, since there has been number of communication exchanged

between the parties and the stand of the respondents right through was that, they wanted to settle the matter and in this regard, they had taken time to settle it, the said decision referred by the learned counsel for the respondents cannot be applied to the facts of the present case.

29. Like that, in (2007) 5 SCC 719, i.e., Jagdish Chander's case, the principle was that, the mere use of the word Arbitration or Arbitrator in a Clause will not make it an Arbitration Agreement, therefore there must be a clear and unambiguous clause for referring the dispute to the Arbitrator under the Arbitration Law.

30. If the said principle is applied to the facts of this case, as has been quoted, the relevant clause, i.e., Clause 13 of the Agreement, makes clear that, the disputes, i.e., all disputes between the parties and or their legal heirs relating to the partnership shall be referred to Arbitration under the Indian Arbitration Act, which means, the dispute between the parties as well as with their legal heirs pertaining to the partnership is referable for Arbitration under Indian Arbitration and Conciliation Act. Therefore the said decision also, in the opinion of this Court, cannot advance the case of the respondents.

31. The third decision, i.e., (2013) 2 CTC 533 in the matter of Indus Ind Bank Ltd., v. Mulchand B.Jain, a Division Bench of this Court has held

that, by virtue of Section 21 of the Arbitration Act, the Arbitration proceedings can be commenced when notice has been served and received by concerned party. And in that case, where the decision was made by the Division Bench, there was no proper notice, therefore the Arbitral proceedings cannot be said to be commenced.

32. Here in the case in hand, there has been a clear arbitration notice, dated 13.08.2013, where the petitioners not only invoked the Arbitration clause but also named some of the Arbitrators for approval of the respondents and the said notice for arbitration, dated 13.08.2013 having been duly served on the respondents and in fact the first respondent has replied on 02.09.2013 requiring some time to revert back. Therefore the said decision would no way be applicable to the present facts of the issue.

33. Like that, in the other decision in **(2016) 8 SCC 788** in the matter of **Vimal Kishor Shah v. Jayesh Dinesh Shah**, it was the principle that, what is the arbitrability of a dispute. The dispute arising out of the trust deed governed by Trust Act 1982 since can be decided with exclusive jurisdiction of the Civil Court, the Arbitration is impermissible.

34. Here in the present case, it is a clear agreement between the parties by way of partnership deed, where there is an Arbitration clause and

the said clause consciously has been made in both the Deeds, i.e., Partnership Deed, dated 31.08.2004 as well as in the partnership deed, dated 17.08.2010 and the issue between the parties as well as between the legal heirs or the parties and legal heir of the agreement can very well be referred to an Arbitrator by invoking Clause 13 (Arbitration Clause), therefore there could be no gainsaying that, the arbitration proceedings cannot be invoked to the present issue.

35. Therefore all these decisions cited by the learned counsel for the respondents are not related to the facts of the present case and since the said principles are not applicable to the present facts of the case, by citing those decisions, the respondents cannot advance the case any further.

36. At the same time, the learned counsel for the petitioners had cited two decisions referred to above, wherein, in **(2008) 13 SCC 667 in the matter of Ravi Prakash Goel v. Chandra Prakash Goel**, the Hon'ble Apex Court has given an exhaustive view in this regard and the relevant portion of the said Judgment is reproduced hereunder :

"23. On the dissolution of the firm, the arbitration clause does not come to an end and so if a dispute had arisen during the lifetime of the deceased partner, his legal representatives would be entitled to take proceedings under Section 20 of the Arbitration Act, 1940.

24. When a partner dies and the partnership comes to an end it is not only right but also the duty of the surviving partner to realize the assets for the purpose of winding up of the partnership affairs including the payment of the partnership debts. However, it is true that in a general sense the executors or administrators of the deceased partner may be said to have a lien upon the partnership assets in respect of his interest in the partnership and taking the partnership account.

...

27. We are of the opinion that in view of the provisions of Section 46 read with Section 48 of the Partnership Act as well as Section 40 of the Arbitration and Conciliation Act, 1996, the application for appointment of an arbitrator under the arbitration clause of the partnership deed was liable to be allowed and the learned Chief Justice has erred in overlooking the said provisions. While right to sue for rendition of accounts of partnership firm survives on the legal representative of a deceased partner, he is also entitled to invoke the arbitration clause contained in the partnership deed.

...

29. As already stated, it was not legally essential to specifically make a mention that the partners included their legal heirs, representatives, assigns or legatees etc. and the arbitration clause could be invoked by the appellant as the legatee as well as the legal heir/legal representative of the deceased Dulari Devi particularly where the dispute had arisen during her life time. The appellant's claim in the

instant case is based on the will as well as being a legal heir of the deceased Dulari Devi. The appellant, in our opinion, possessed a legal and enforceable right to invoke arbitration clause and move application under Section 11 of the Arbitration Act before the High Court for appointment of arbitrator. The word "party" as used in the partnership deed does not exclude inclusion of legal heirs, legal representatives etc. as being canvassed by the respondents. Thus, in our opinion, in view of the provisions of Sections 40 and 46 of the Partnership Act read with Section 40 of the Arbitration Act, the appellant has a legal right to commence arbitration by moving an application under Section 11 of the Arbitration Act in the High Court as in our view, the right to sue survives on him as legal representatives of the deceased Dulari Devi and he is entitled to invoke clause 13 of the partnership deed. Moreover, the dispute referable to arbitration had already arisen during the life time of Dulari Devi which is also well settled that where a dispute is referable to arbitration, the parties cannot be compelled to take recourse to in the civil courts."

37. Like that, in **Emm Enn Associates v. Commander Works Engineer** reported in (2016) 13 SCC 61, the Apex Court has held that, application under Section 11 is expected to contain pleadings as to existence of dispute. The applicant is not expected to justify the claim or plead extensively with regard to limitation or production of document to demonstrate that claim and such kind of issue would be normally left to arbitral tribunal and in this regard, the

Apex Court has observed as follows :

"28. The disputed claims having never been adjudicated, we are of the view that there was a dispute which needed an adjudication after looking into all relevant documents, bills and certificates which could have been appropriately examined by the Arbitral Tribunal and the observation of the Chief Justice "As the appellant has failed to prima facie show this Court that there was a live claim of the appellant" does not commend us."

38. Moreover it is a settled legal proposition that, in so far as the reason for invocation of Section 11 of the Arbitration and Conciliation Act, 1996, the Court must satisfy that, whether there is an agreement between the parties consisting of an arbitration clause and that agreement is signed by both the parties, then either party to the agreement can invoke such a clause, if such party feels that, there is a dispute between the parties which could not be resolved amicably, other than referring the dispute to the arbitral tribunal by invoking the clause for arbitration.

39. It is also settled that, the Hon'ble Chief Justice's power to appoint an Arbitrator under Section 11 of the Act or the power to be exercised by his nominee, is an administrative action, therefore before such invocation, the Judge, who deals with the arbitration matters, can only satisfy that there is an

arbitration agreement between the parties, which is in writing and signed by both sides and since either of the party comes forward with a dispute to be referred to the arbitral tribunal and the same has not been acceded to or acted upon by other party, then it is open to the party, who raise the dispute, to approach this Court by invoking Section 11 of the Arbitration Act, 1996.

40. Here in the case in hand, there is an agreement between the parties, where there is a clause for arbitration, i.e., clause 13. Under the said clause, all dispute arises between the parties or with their legal heirs in respect of the partnership can be resolved by referring the matter to the Arbitration proceedings under the Indian Arbitration Law.

41. In view of the said specified clause where the parties have signed already, such clause is invocable by either of the party, who feels that, there has been a dispute, which has not been settled between the parties amicably, despite the efforts taken in this regard.

42. Here, the petitioners, after the loss of one of the partner, i.e., father of the second and third petitioner and the husband of the first petitioner, had the privilege of becoming partner in the reconstituted partnership and in this regard, it is the case of the petitioners that, they have not been inducted into the partnership but contrary to that, the contra case of the respondents was that, though they are entitled to get into the partnership,

they have not expressed their desire, therefore they have not been inducted.

43. This stand taken by both the parties itself is an issue referable to the Arbitration Proceedings for resolvment.

44. Further, after the death of the father of the second and third petitioner, the account could have been settled by the respondents, especially the first respondent, who is the present surviving partner. But the account seems to have not been settled so far except some payments with regard to the rental income. Therefore this is also yet another issue referable to an Arbitrator to resolve it.

45. Therefore there has been issues between the parties where the legal heirs also can be inducted for the purpose of referring the matter to the Arbitral Tribunal and the notice invoking arbitration clause, dated 13.08.2013 was duly served on the respondents and infact the first respondent has given reply also on 02.09.2013 and thereafter many number of communications exchanged between the parties till 06.11.2017.

46. Despite all these developments and happenings since the issue could not be resolved amicably and sole arbitrator also could not be appointed by mutual consent between the parties, this Court is of the firm view that, there is every justification on the part of the petitioners to approach this Court by

invoking Section 11 of the Arbitration and Conciliation Act, seeking indulgence of this Court to appoint a sole arbitrator to decide the issue referable under the Arbitration agreement.

47. In that view of the matter, this Court is inclined to accept the case of the petitioners and accordingly is inclined to appoint a sole arbitrator to resolve the matters between the parties.

48. Accordingly, Mr.P.Mahadevan, learned Advocate having office at No.1, High Court Lawyers Chamber, High Court Buildings, Chennai - 104 (Mobile No. 93827 06966) is hereby appointed as sole arbitrator.

(i) The Arbitrator shall enter into the reference and to proceed in accordance with law.

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

With these order of appointment of Arbitrator, this Original Petition is ordered. Consequently, connected Original Applications are closed.

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Index : Yes

Speaking Order

R. SURESH KUMAR, J.

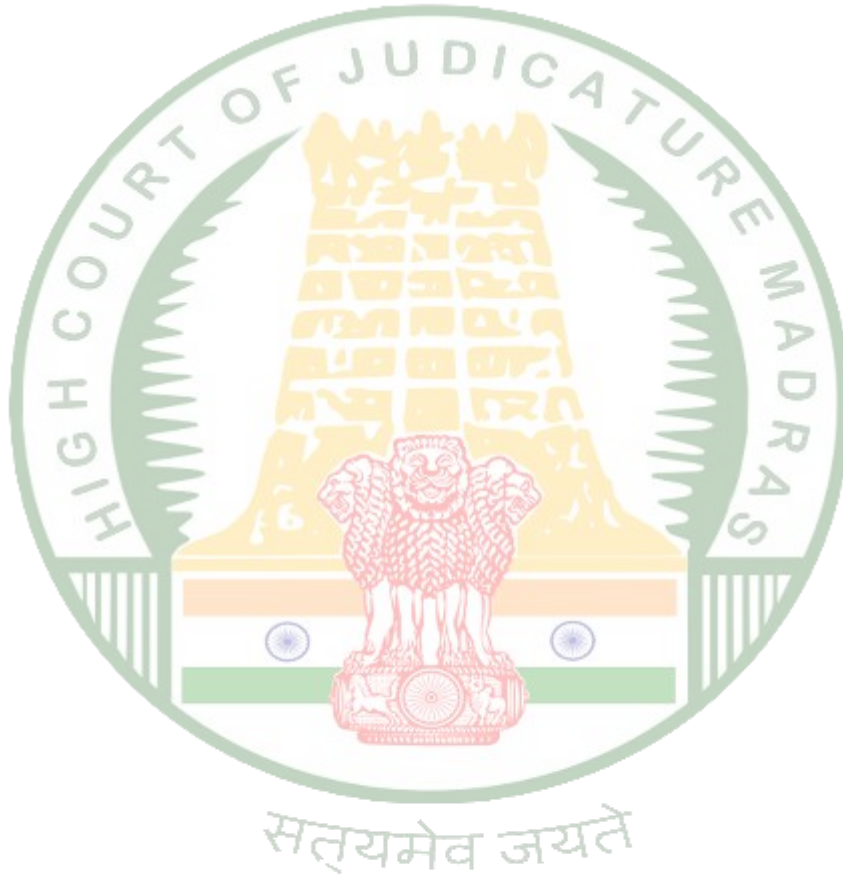
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