

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.336 of 2019

M/s.Captain Palanisamy Service Station
Rep. by Mr.S.Kuppannan,
Managing Partner,
No.323, Omalur Main Road,
Salem-636 007.

.. Petitioner

Vs.

1. Indian Oil Corporation Limited,
rep. by its Executive Officer,
Marketing Division, Southern Region,
Tamil Nadu State Office, Indian Oil Bhavan,
No.139, Nungambakkam High Road,
Chennai-600 034.
2. Indian Oil Corporation Limited,
rep. by its Deputy General Manager,
Marketing Division, Salem Divisional Office,
No.234, First Floor, NH-7,
Salem-Bangalore Bypass Road,
Kondalampatti, Salem-636 010.

3. K.P.Manoharan

.. Respondents

* * *

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate upon the disputes arisen between the petitioner and respondents 1 and 2 under the Dealership Agreement dated 12.01.1999 and termination order dated 03.09.2018.

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For Petitioner : Mr.S.Senthil

For Respondents : Mr.Abdul Saleem for RR 1 and 2

ORDER

This Original Petition is filed seeking for appointment of Sole Arbitrator to adjudicate upon the disputes arisen between the petitioner and respondents 1 and 2 under the Dealership Agreement dated 12.01.1999 and termination order dated 03.09.2018.

2. The petitioner claims that it derived its name from one Mr.Palanisamy, who served in the Indian Army and died in the warfield in the Indo-Bangladesh War, 1972. The petroleum outlet was allotted to his father in honour of the said soldier. It was a partnership firm and there were additions and changes in the composition of the partnership, which were duly approved by the respondents. The approved partnership deed dated 12.01.1999 consists of the present partners, viz., Mr.K.Palanisamy, Mr.S.Kuppanan, Mrs.G.Amaravathi and Mr.K.P.Manoharan. There was a Dealership Agreement dated 12.01.1999. The second respondent issued a Show Cause Notice dated 09.10.2017 alleging breach of certain clauses contained in the Dealership Agreement, which was suitably replied to by the petitioner.

The petitioner claimed that there was no reconstitution of the partnership firm in the manner known to law. However, challenging the said notice, the petitioner filed W.P.No.29317 of 2017, which was disposed of on 16.11.2017, with a direction to the official respondents to provide an opportunity of personal hearing to the petitioner.

3. While so, the petitioner requested the official respondents to refer the disputes to arbitration in terms of Clause 67 of the Dealership Agreement, which was not heeded to. Thus, the petitioner filed O.A.Nos.360 and 361 of 2018 seeking injunction and stay of the enquiry, which were also dismissed by this Court on 24.07.2018 on the premise that the applicant therein/the petitioner had opted to go for the hearing before the authorities and thus, waived their remedy to go for arbitration. It was also observed that there was no arbitrable dispute between the parties and any dispute may arise for reference, after passing of an order by the authorities. Subsequently, the official respondents terminated the order on 03.09.2018, which, the petitioner challenged in W.P.No.23431 of 2018. The said petition was disposed of, on 19.02.2019 with liberty to the parties to initiate arbitration proceedings. Thus, the petitioner is before this Court in this petition.

4. Heard the learned counsels on either side. Learned counsel

for the parties submitted that they are agreeable for the appointment of Hon'ble Mrs.Justice S.Vimala, a retired Judge of this Court as the sole Arbitrator.

5. Considering the submissions of the learned counsels for the parties, this Court appoints Hon'ble Mrs.Justice S.Vimala, a retired Judge of this Court, residing at No.3, River View Enclave, IV Main Road, I.P.S. Officers Colony, Manapakkam, Chennai-600 125, as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se 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 the order. The learned Arbitrator is at liberty to fix her remuneration and other incidental expenses. The proceedings shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

6. The Original Petition is ordered accordingly, leaving the parties to bear their own costs.

31.07.2019

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PUSHPA SATHYANARAYANA, J.

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