

A.No.3682 of 2019
and O.A.No.700 of 2019

PUSHPA SATHYANARAYANA, J.

A.No.3682 of 2019 is filed by the applicant seeking for a direction to the respondent to dissolve the Partnership named "Wrapster Foods" dated 14.08.2017 as per Clause 3 of the Memorandum of Understanding dated 16.03.2019.

2. Pending the said application, the applicant filed O.A.No.700 of 2019 praying an order of interim injunction restraining the respondent, their men, agents, servants, representatives, anybody acting on his behalf in any manner publishing any defamatory emails, statements, material, article and any other visual representations which would tarnish the image of the applicant.

3. The applicant, the respondent and three others found a partnership firm under the name and style as Wrapster Foods, pursuant to the partnership deed dated 14.08.2017. Subsequently, the applicant and three other partners formed a company called Swaadam Food and Hospitality Pvt Ltd. (in short, "Swaadam") on 22.02.2018, which started a restaurant "Maziga". They also started

another company named "Wrapster Hospitality Pvt Ltd." which runs restaurants at Bengaluru and Chennai, though one of the restaurants so started was closed.

4. Since there were disputes between the applicant, the respondent and two other partners, a Memorandum of Understanding dated 16.03.2019 (in short, "MoU") was entered into between the applicant and the respondent with the knowledge of all other partners. Clause 3 of the MoU states that both the applicant and the respondent requested the Auditor to transfer 25% share held by the applicant and his wife Bharathi from Swaadam, immediately after the cancellation of Wrapster Foods Partnership Deed. Clause 5 stipulates that the applicant and the respondent agreed to sell one restaurant belongs to Wrapster Hospitality Pvt. Ltd. within 10 days for Rs.42,00,000/- and subsequently, 50% share of the applicant, i.e., Rs.21,00,000/- will be paid back to the respondent to clear the applicant's outstanding account. Since the respondent did not fulfill his obligation under Clause 3 of the MoU, the applicant could not perform his part of the obligation under the said Clause.

5. Clause 8 of the MoU provides for arbitration and since there

were disputes between the partners, the applicant filed A.No.3682 of 2019 seeking the aforesaid relief.

6. The applicant further stated that when A.No.3682 of 2019 is pending before this Court, suppressing the same, the respondent gave a criminal complaint to the Inspector of Police, Thirumangalam Police Station on 05.07.2019, for which, he replied suitably. The respondent also sent e-mails to the officers of the malls, where their restaurants are located, with defamatory remarks punishable under Sections 499 and 500 IPC. When the disputes have to be resolved by way of arbitration in terms of Clause 8 of the MoU, the act of the respondent is unwarranted and thus, the petitioner filed A.No.700 of 2019 seeking injunction, as stated supra.

7. Resisting these applications the respondent filed counter affidavits, wherein, *inter alia*, it is stated that the non-joinder of the other partners to these applications leads to partial adjudication, which cannot be permitted in the eye of law and only after impleadment of all the parties to a proceedings, it can be said to be a proper adjudication. It is stated that though the applicant and his wife Bharathi owns 25% and 50% in Swaadam and Wrapster Hospitality Pvt. Ltd., respectively,

they have not contributed such an extent for the share capital or made any such investment. It is also stated that the applicant voluntarily prepared the MoU for settlement and promised to refund certain amounts, which promise, he failed to comply with. However, it is stated that the respondent is ready to go before the Arbitral Tribunal for arriving at a solution and expressed no objection for appointment of a sole Arbitrator.

7.1. In so far as O.A.No.700 of 2019 is concerned, the respondent submitted that since the applicant diverted funds of the partnership firm and when he questioned the applicant, he was threatened by him. Hence, he gave a complaint to the police and he denied making any defamatory remarks against the applicant and the same is not covered under the arbitration clause contained in MoU also.

8. Heard the learned counsel on either side and perused the materials placed before this Court.

9. Though the respondent disputed certain factual aspects, he consented for appointment of a sole Arbitrator. Having regard to the submissions of the learned counsels on either side and the consent

expressed by the learned counsel for the respondent, without expressing any opinion on the merits of the case, this Court appoints Hon'ble Mr. Justice K. Mohanram, a retired Judge of this Court, residing at "ISHANA", Plot No.15B, Radiant Avenue, 5th Street, Neelangarai, VGP Golden Beach Layout, Injambakkam, ECR, Chennai-600 115, (Phone No.94444 64646), 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 his remuneration and other incidental expenses. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. It is open to the parties to agitate their claims before the learned Arbitration in accordance with law.

10. These applications are disposed of, accordingly.

06.08.2019

Index : Yes / No
Internet : Yes

Speaking Order

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