

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.553 of 2019

S.Rajesh,
S/o.Somu,
Partner, M/s.Trinethra Enterprises,
residing at :
No.30/17-A, Nehru Street,
Padikuppam, Chennai-600 107. .. Petitioner

Vs.

Mr.D.Narendran
S/o.V.Dhanasekaran,
Partner, M/s.Trinethra Enterprises,
residing at :
Old No.71, New No.11,
AB Block, 3rd Street,
Anna Nagar West, Chennai-600 040. .. Respondent

* * *

Prayer : Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole Arbitrator for resolution of the disputes between the parties.

* * *

For Petitioner : Mr.Manoj Sreevalsan

For Respondent : Mr.C.K.M.Appaji

ORDER

The petitioner has filed this Original Petition seeking for appointment of a sole Arbitrator for resolution of the disputes with the respondent.

2. The petitioner along with one Prabhuram was running a partnership firm under the name and style as M/s.Trinethra Enterprises vide partnership deed dated 18.06.2015. The partnership firm was reconstituted on 04.08.2016 and the respondent replaced Mr.Prabhuram. There was a difference between the partners, which resulted in filing of police complaint. Hence, the petitioner decided to walk out of the partnership. Thus, he issued a legal notice on 29.04.2019 calling upon the respondent to appoint an arbitrator on mutual consent in terms of Clause 18 of the Reconstitution of Partnership Deed, which was negated by the respondent on 27.05.2019 citing the pendency of the criminal case. Thus, the petitioner filed this petition seeking the aforesaid relief.

3. The respondent filed a counter-affidavit dated 12.09.2019 admitting that he was inducted as the partner of the firm. However, it is his case that the partnership firm availed loan from the Corporation Bank, Ambattur Branch by mortgaging the properties owned by the partners and while he was given an impression that an amount of Rs.95 lakhs was sanctioned as loan and the amount was not disbursed to the account, contrary to the said fact in the year 2016 itself the loan amount was disbursed, of which, a sum of Rs.51 lakhs was diverted to

the erstwhile partner and the remaining amount of Rs.44 lakhs was gradually took away by the respondent to purchase a flat on his own, which was very much against the conditions on which the loan was sanctioned. This fact came to light only when the firm received a demand notice on 21.04.2018 for payment of Rs.97,35,996/- from the Bank. Hence, he gave a police complaint, which led to the arrest of the petitioner and his release on bail. The respondent claimed that he retained the machineries for the settlement of the loan account, as the loan amount was unauthorisedly utilized by the petitioner and the erstwhile partner. Suppressing all these facts, the petitioner filed this petition seeking appointment of arbitrator. The respondent denied the existence of arbitration clause in the partnership deed and thus, sought for dismissal of this petition as not maintainable.

4. Heard the learned counsels on either side. Learned counsel for the respondent reiterated the averments of the counter-affidavit and contended that there is neither arbitration clause contained in the partnership deed nor arbitrable dispute arose between the parties and thus, this petition is not maintainable. It is his submission that the petitioner played fraud in the business and also cheated the bank by colluding with the erstwhile partner, for which, a police complaint was given and the same is pending and to settle the loan account only the

respondent retained the machineries.

5. Admittedly, the Reconstitution of Partnership Deed provides for arbitration of disputes under Clause 18. Pendency of the criminal case is not a bar for the constitution of the Arbitral Tribunal to decide the disputes between the parties.

6. Having regard to the submissions, this Court appoints Mr.N.C.Ramesh, Senior Advocate, having office at No.230, Law Chambers, High Court Buildings, Chennai-600 104 (Mob. No.9841212720), as the Sole Arbitrator to enter upon reference and adjudicate the disputes between 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 the 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. The appointment of the Arbitrator will be subject to the disclosure and declaration made, as per the Sixth Schedule to the Arbitration and Conciliation Act, 1996 coupled with the amendments made therein.

7. The Original Petition is ordered accordingly. The parties shall bear their own costs.

21.11.2019

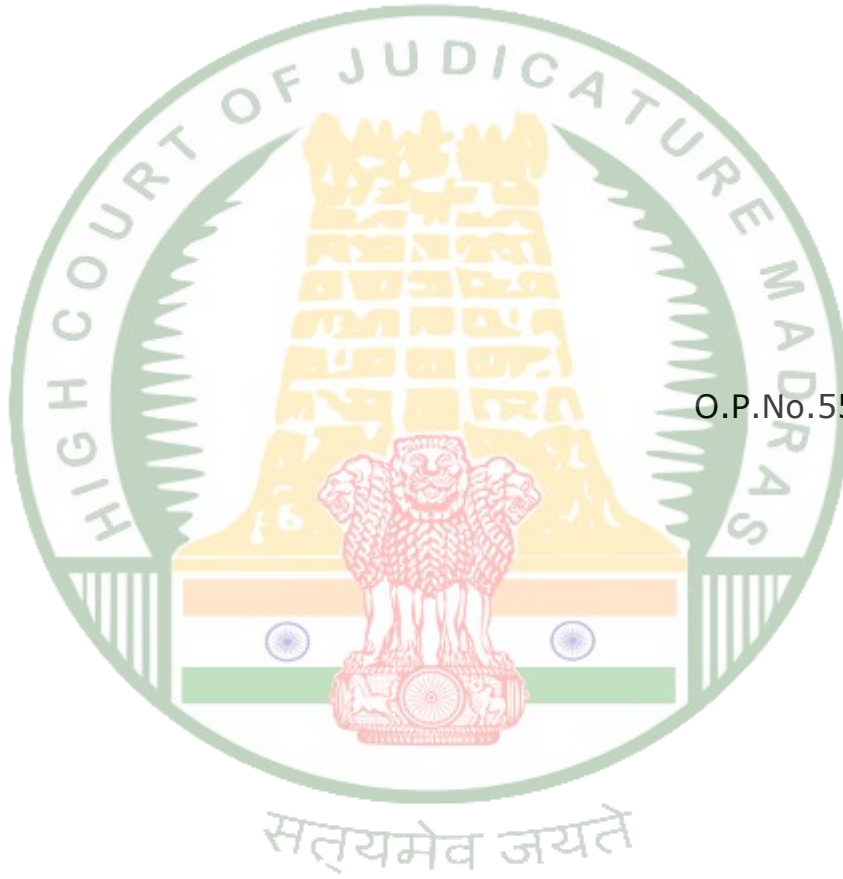
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PUSHPA SATHYANARAYANA, J.

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