

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.498 of 2019

A.R.Prabhakar

.. Petitioner

Vs.

1. V.G.B. Sivarama Prasad

2. A.G.Hima Rani

3. Kotla Apparao

4. Kotla Rama Krishna Mohanarao

5. Kotla Venkata Prasada Rao

6. D.Bulamma

7. A.R.Pappa

.. Respondents

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator under Clause 13 of the Partnership Deed dated 24.01.1992 to adjudicate upon the differences and disputes between the parties hereto as per the Partnership Deed dated 24.01.1992.

* * *

For Petitioner : Mr.D.Ferdinand
for M/s.BFS Legal

For Respondents : Mr.Mothilal, for
M/s.Mothilal & Booda for RR1 & 6

Mr.S.Sivashanmugam for RR 3 & 4

Mr.P.Munusamy for R7

Mr.M.Krishnamoorthy for R5

R2 – served - NA

ORDER

This Original Petition is filed seeking for appointment of an Arbitrator under Clause 13 of the Partnership Deed dated 24.01.1992 to adjudicate upon the differences and disputes between the parties hereto as per the Partnership Deed dated 24.01.1992.

2. The petitioner and the respondents entered into a Partnership Deed dated 21.02.1992 and constituted a registered partnership firm under the name and style of "Sri Prasanna Venkateswara Ice Factory" (in short, "the firm"). Respondents 4 to 6 and one Mr.Kotala Lakshminarayana, who are siblings expressed their intention to retire from the firm and accordingly, it was reconstituted on 01.04.2005 and also in 2012. Now the petitioner and the respondents 1, 2, 5 and 7 are the partners of the firm.

3. While so, the third respondent allegedly given a complaint to the Inspector of Police, Central Crime Branch, EDF-II, Team-IX(A), Vepery, Chennai, alleging that the shares of respondents 3, 4 and 6 in the firm were not settled, who in turn, directed the petitioner to appear for enquiry on 12.04.2019. The petitioner appeared before the enquiry officer and placed all the materials to show that the said persons retired from the firm in 2005 and after nearly 14 years, without any communication whatsoever in the interregnum, they made the present false claim.

4. It is also stated that since the said respondents were attempting to disturb the day-to-day affairs of the firm, prior to the filing of this petition, the petitioner filed A.No.476 of 2019 under Section 9 of the Arbitration and Conciliation Act, 1996 (in short, "the Act") seeking an order of injunction restraining the respondents 3, 4 and 6 from interfering with their day-to-day affairs, which relief was granted by this Court on 27.04.2019.

5. In the said circumstances, the petitioner invoking clause 13 of the Partnership Deed dated 21.02.1992, which provides for arbitration of disputes, sent a notice dated 25.05.2019 nominating a retired District Judge as their arbitrator and sought for the consent of the

respondents. Since there was no response from the respondents, the petitioner is before this Court with this petition under Section 11(6) of the Act.

6. The respondents 3 and 4 have filed a counter affidavit resisting the prayer of the petitioner stating that there is no arbitrable dispute between the parties. It is their submission that they have not resigned from the partnership firm as alleged by the petitioner and those letters are the outcome of the forgery committed by the petitioner. It is also stated that the petitioner has not included one Mr.Kotla Lakshmi Narayana, who was a partner and died on 29.08.2005 or his legal heirs and thus, this petition is not maintainable on that score also.

7. The fifth respondent filed a counter-affidavit dated 15.07.2019 supporting the prayer of the petitioner. It is stated by the fifth respondent that the respondents 3 and 4 and himself gave letters of retirement in 2005 and their another brother one Mr.Kotla Laksminarayana's son gave such letter on behalf of his father. Accordingly, the firm was reconstituted and only in the year 2012, he was again inducted in the firm as partner with 35% share. He also stated that he was given his proportionate share by the firm and only

due to the differences between his brothers, other family members and himself, the criminal complaint was given by respondents 3, 4 and 6 without any basis after 14 years of their retirement.

8. The seventh respondent is the mother of the petitioner and she supports the prayer of her son.

9. The first and sixth respondents are among the other partners of the firm and they have no objection in allowing this petition.

10. Though notice has been served on the second respondent, none appears on her behalf.

11. Heard the learned counsels on either side and perused the materials placed before this Court.

12. Though learned counsel for the respondents 3 and 4 resisted the prayer initially, a consent was given by the counsels for the parties for the appointment of an Advocate of this Court as the Sole Arbitrator.

13. Considering the submissions of the learned counsels for the parties, Mr.Mr.N.Damodaran, Advocate, having office at No.5, Sivakamipuram, 2nd Cross Street, Thiruvanmiyur, Chennai-600 041 (Phone No.94440 56005), is appointed 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 shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

14. The interim order granted by this Court on 27.04.2019 and extended thereafter is further extended for a period of six weeks from the date of receipt of a copy of this order to enable the parties to file appropriate applications for appropriate reliefs before the learned Arbitrator.

WEB COPY

15. The Original Petition is ordered accordingly and the Original application is consequently, closed. The parties shall bear their own costs.

27.08.2019

Index : Yes / No
Internet : Yes
gg



WEB COPY

PUSHPA SATHYANARAYANA, J.

gg



O.P.No.498 of 2019
and O.A.No.476 of 2019

WEB COPY

27.08.2019