

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.1020 of 2017

C.Venkatesh,
S/o.B.Chandrappa,
Managing Partner,
M/s.Sri Krishna Palace,
50/2, Nethaji Road,
Hosur-635 109.
residing at D.No.2/16,
Near Sub-Collector Bungalow,
Opp. Railway Station Road,
Denkanikotta Road, Hosur,
Krishnagiri District.

.. Petitioner

Vs.

C.Srinivasulu,
S/o.B.Chandrappa,
Partner, M/s.Sri Krishna Palace,
residing at No.91-D, 2nd Cross,
Appavu Nagar, Hosur-653 109,
Hosur-635 109.

.. Respondent

* * *

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an arbitrator to decide the dispute between the petitioner and the respondents arising out of the agreement dated 20.11.2009.

* * *

For Petitioner : Mr.Avinash Wadhvani
for M/s.V.Raghavachari

For Respondent : Mr.Ashfaq Ali

ORDER

The petitioner has filed this Original Petition seeking for appointment of an Arbitrator to decide the dispute between the petitioner and the respondents arising out of the agreement dated 20.11.2009.

2. The petitioner and the respondent are brothers. There was a partnership deed dated 20.11.2009 between them to run the business under the name and style as M/s.Krishna Palace with 70:30 investment. There were loan accounts as well and the firm is an Income Tax assessee under the Income Tax Act, in which, the petitioner played active role, while the respondent was busy in his construction and real estate business. The operational expenses of the firm alone ranged from Rs.16 lakhs to Rs.18 lakhs p.m., besides it has to pay EMI of Rs.4,36,000/- p.m. for the loans availed and to pay other statutory dues. For the purpose of business, the petitioner opened a current account in the name of the firm in the year 2010. The respondent raised a dispute in the year 2017 with regard to the reconciliation of accounts. Consequently, the respondent sought for the bank not to permit the petitioner to operate the account of the firm. Since the said action of the respondent jeopardized the interest of the

firm affecting the credit worthiness of the parties, the petitioner issued an arbitration notice on 11.09.2017 in terms of Clause 16 of the Partnership deed, which was not replied to by the respondent. In this backdrop, the petitioner is before this Court.

3. Denying the allegations of the petitioner, the respondent filed the counter-affidavit, *inter alia*, stating that the respondent never stopped the petitioner from operating the account, but on the other hand, had only revoked the authority given to the petitioner to operate the account alone, which meant that both of them can operate the account as partners and as such, the business of the firm could not be affected, whereas, the petitioner pleaded a false case before this Court. It is his contention that the letter dated 11.09.2017 cannot be construed as the letter invoking the arbitration clause, as the said letter is incomplete and bereft of any particulars. It is claimed by the respondent that he filed a suit in O.S.No.123 of 2017 for dissolution of partnership firm and though the petitioner is aware of the same, he conveniently suppressed the same in this petition. In fact, the petitioner via e-mail dated 23.10.2017 and the letter dated 26.10.2017 agreed for dissolution of the firm. The petitioner diverted the funds of the firm to his account and also his spouse account, but the petitioner projected that the firm availed loan from his spouse, for

which there was no necessity at all. It is also the case of the respondent that the petitioner never accounted for the income properly and there were suppressions. Thus, the respondent claimed that there is no arbitrable dispute at all with the petitioner and sought for dismissal of this application.

4. Learned counsel appearing on behalf of the petitioner contended that the petitioner moved Section 9 application before the Principal District Court seeking interim reliefs to save the business and as there is no response to the arbitration notice sent on 11.09.2017, the petitioner filed this petition.

5. On the other hand, learned counsel for the respondent submitted that the petitioner has not come before this Court with clean hands and he suppressed various material facts which would go to the root of the matter. However, after some vociferous submissions, he has agreed for appointment of any retired District Judge to be the sole Arbitrator.

6. Having regard to the submissions, this Court appoints Mr.G.Palaniappan, District Judge (Retd.), 2B Owners Court, Montieth Street, Montieth Road, Egmore, Chennai 600 008, (Mobile

No.9443335815), 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 at Hosur 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.

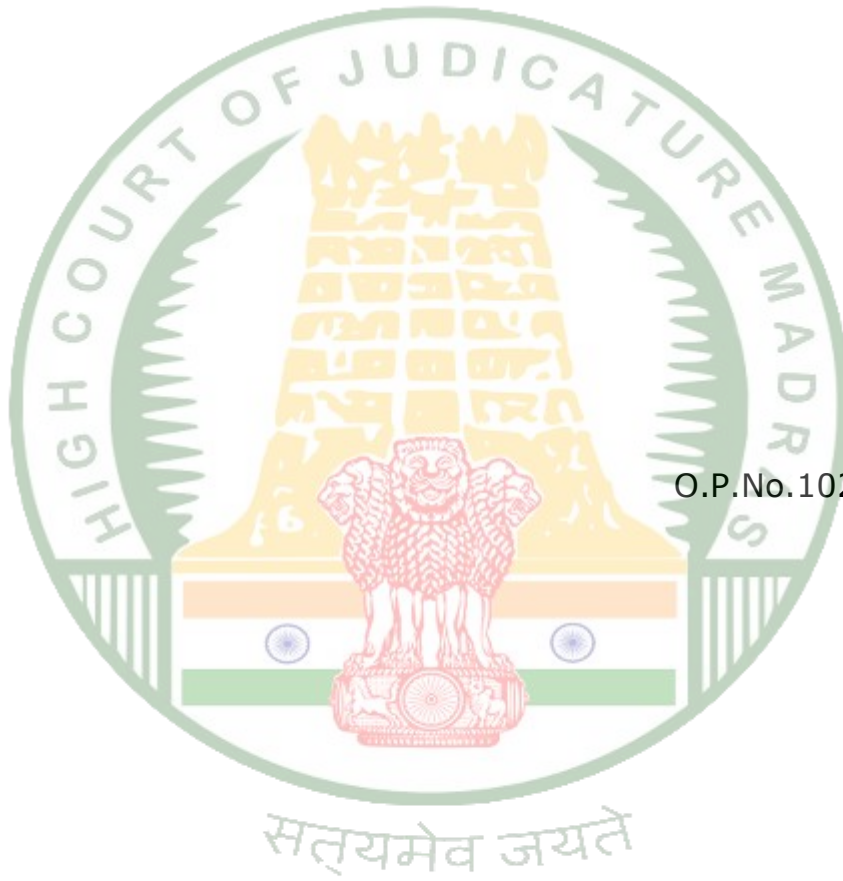
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PUSHPA SATHYANARAYANA, J.

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