

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

O.P.No.1121 of 2018

1. Mr.V.V.Ganesan
2. Mr.H.R.Shah,
3. Mr. N.J. Nooruddin
4. Mr.N.J. Asgar
5. Mr.V.G.Venkatraman
(petitioners 2 to 5 represented
by power agent Mr.V.V.Ganesan) .. Petitioner

-vs-

Mr.P.N.Balasubramanian .. Respondent

Prayer: Petition filed under Section 11 of the Arbitration & Conciliation Act, 1996 praying to appoint an arbitrator with a direction to enter into reference, complete the proceedings and pass the Award within such time as this Court may determine.

For Petitioner : M/s.Ramani & Shankar

For Respondent : M/s. R. Anitha

ORDER

This application seeks for appointment of an arbitrator under section 11(6)(a) of the Arbitration and Conciliation Act 1996.

2. According to the petitioner, the petitioners and respondent subscribed shares in the company viz., APM Auto Parts Private Limited,

Coimbatore and they entered into a share holders agreement dated 13.5.1997. In 2008-2009, due to difference of opinion arose between the parties and option for providing exit to one or the other shareholders came to be discussed, pursuant to which, an understanding was reached on 23.3.2009 between the parties and the same was reduced in writing.

3. As per the agreement, the petitioners have agreed to offer the equity shares held by them in favour of the respondent. The respondent, after buying the equity shares, failed to pay to the share document of the applicant. Since the respondent failed in his commitments as per the Understanding dated 23.3.2009, the petitioners caused a legal notice dated 13.7.2017 invoking arbitration clause proposing to nominate Mr.Sri.V.Ramaswamy as an Arbitrator, to which, the respond failed to give its consent for the same. Therefore the petitioners filed the above petition seeking for appointment of an arbitrator to resolve the disputes *intere se* the parties.

4. On notice, the learned counsel appearing for the respondent appeared before this Court and would vehemently contend that the very application is based on the Understanding reached between the share holders on 23.3.2009. As per the Understanding dated 23.3.2009, it is only a stand alone agreement which does not contain

any arbitration clause. In the event of non existence of arbitration clause, then the petition for appointment of arbitrator is not maintainable.

5. He would also contend that for all the purposes, the Share holders Agreement dated 13.5.1997 has come to an end. The agreement between the partners is valid as per Clause 27 under 'VIII DURATION AND LIMITATION' which reads as under;

VIII DURATION AND LIMITATION;

27. This agreement shall remain valid until either Party intends to withdraw its shareholdings in the "Company" by way of transfer or sale as per clause 10 of this agreement.'

Since the validity of the agreement has come to an end, it is for the applicant to work out their remedy in the manner known to law and hence this petition seeking for appointment of arbitrator is not maintainable.

6. The Honorable Supreme Court in the case of **M/s. Duro Felguera, S.A, Vs. M/s.Gangavaram Port Limited**, reported in **(2017) 9SCC 729**, has quoted the case **National Insurance Company Limited v. Boghara Polyfab Private Limited**, wherein it has been held as follows;

"13.The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. (supra) and Boghara Polyfab (supra). This position continued till the

amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Courts intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11 (6A) ought to be respected."

In view of the judgment of the Honourable Supreme Court, this Court has to see whether the existence of the arbitration agreement, nothing less, nothing more.

7. Clause 26 of the Agreement which provides for arbitration reads as under;

'VII ARBITRATION;

26. If any dispute and /or difference shall at any time arise between the Parties to this agreement or any clause or their respective rights, claims or liabilities hereunder or otherwise, however, in relation to or arising out of or concerning this agreement, such dispute and/or differences shall be referred to arbitration by an arbitrator, to be appointed by all parties in mutual consultation and shall be settled as per the Arbitration Act.'

Pursuant to that, there is an Understanding reached between the parties on 23.3.2009.

As seen above, clause 26 of the Share Holders Agreement dated 13.5.1997 consist of an arbitration clause.

8. In the instant case also, taking note of the dictum of the Hon'ble Apex Court as well as the fact that the Agreement dated 13.5.1997 contains arbitration clause enabling the parties to adjudicate the disputes through arbitration proceedings, this Court confine its examination as to the existence of the arbitration agreement alone and do not want to go into other issues and as such inclined to appoint a retired High Court Judge as an Arbitrator.

9. The other issue with regard to limitation, binding nature of the arbitration clause and whether the memorandum of understanding is a stand alone agreement or not?, existence of arbitral dispute etc has to be left open to the arbitrator.

10. Accordingly, I thus appoint Mr. Sriram Panchu, Senior Advocate, having office at IV High court Chambers, High court Buildings, Chennai 600 104 (PH: 25341002) as the sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties. He 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.

30.01.2019

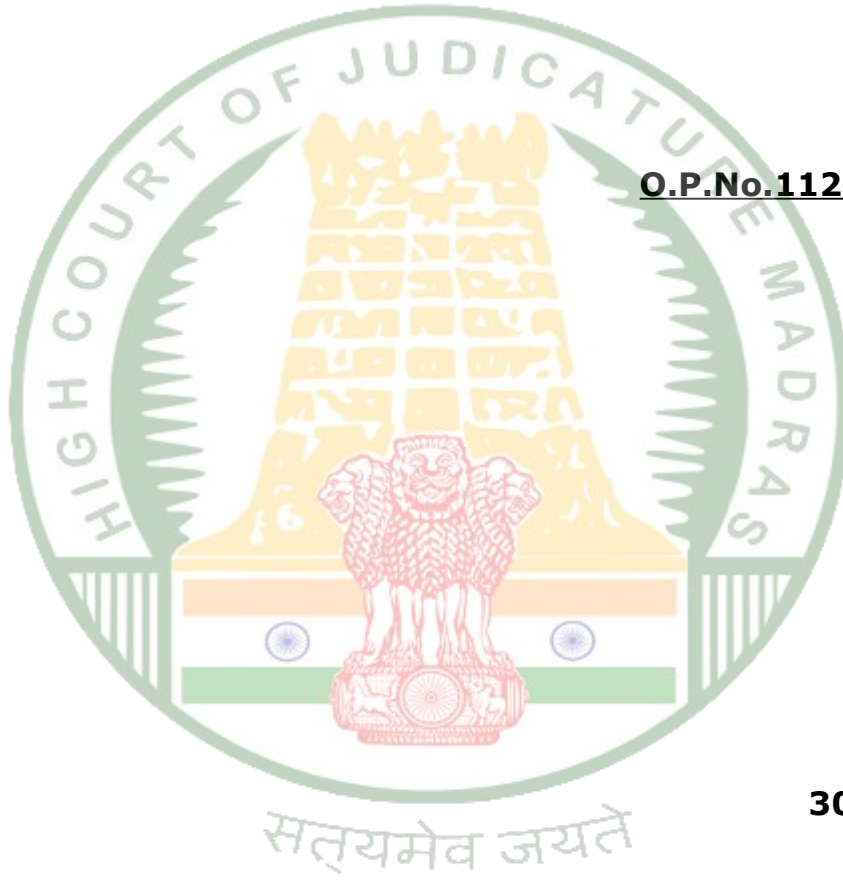
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M.GOVINDARAJ, J.

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