

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : **27.04.2019**

CORAM

THE HONOURABLE Mr.JUSTICE **R. SURESH KUMAR**

O.P. No.869 of 2018

A.Gopalakrishnan

.. Petitioner

-VS-

1. M/s.Sri Vinayaka Plastics,
Represented by its Managing Director,
No.3, D1, Periyar Salai,
Gnanamoorthy Nagar,
Ambattur,
Chennai - 600 053.

2. K.Anandh
S/o.Kamalakannan,
No.3, D1, Periyar Salai,
Gnanamoorthy Nagar,
Ambattur,
Chennai - 600 053.

.. Respondents

Prayer: Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to enter upon the dispute between applicant and the respondents pertaining to all disputes subject matter of the Partnership Deed dated 04.04.2014 and pass award expeditiously.

For Petitioner : Mr.P.V.Sudakar

For Respondents : No Appearance

ORDER

This Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the prayer to appoint an Arbitrator to enter upon the dispute between applicant and the respondents pertaining to all disputes subject matter of the Partnership Deed dated 04.04.2014 and pass award expeditiously.

2. Heard the learned counsel appearing for the petitioner. Though notice has been served, proof has been filed and the name of the respondents is also printed in the cause list, they are not represented by any counsel nor appeared before this Court.

3. The petitioner and the second respondent entered in to a Partnership Deed dated 04.04.2019. Under the said agreement, the petitioner had become Partner of the business run by the second respondent i.e, first respondent firm at Ambattur, Chennai in the name of "Sri Vinayaka Plastics".

4. In this regard, the applicant's immovable property at No.6/9, Alwarpet Street, Alwarpet, Chennai-18 was mortgaged by the second respondent at Lakshmi Vilas Bank, Perambur Branch, Chennai, to avail the loan of Rs.4.5 crores to run the first respondent industry.

5. Though it was agreed between the parties that, a sum of Rs.6,000/- (Rupees Six Thousand Only) remuneration is payable for the applicant per month and Rs.10,000/- (Rupees Ten Thousand Only) remuneration for the second respondent per month and the share of profits is 30% to the applicant and 70% to the second respondent, the said agreement has not been honoured and no amount has been paid including the remuneration to the applicant.

6. In the meanwhile, the loan availed by producing the property of the applicant at Lakshmi Vilas Bank, since has not been cleared, time and again, the applicant instructed the respondents to clear the said loan, however the second respondent has not cleared the loan. While so, ultimately, now the said Bank i.e., Lakshmi Vilas Bank Perambur, issued notice under SARFAESI Act on 09.08.2018. Only in that circumstances, the applicant had issued a notice on 10.10.2018 to the respondents by invoking Clause 14 of the Agreement i.e, Arbitration Clause and requested the respondents to refer the issue arose between the parties i.e., applicant and the second respondent to an Arbitrator. However, on receipt of the said legal notice issued, by invoking Arbitration Clause by the applicant to the respondents, the respondents have not come forward to respond.

7. Only in that circumstances, the petitioner has filed this Original Petition seeking with the aforesaid prayer to appoint an independent Arbitrator to enter in to reference, to resolve the issue between the parties.

8. I have considered the said submission made by the learned counsel for the petitioner and perused the materials placed before this Court.

9. There has been a written agreement by way of Partnership Deed between the parties dated 04.04.2019 wherein under Clause 14, there is an Arbitration Clause which reads thus:

"14. That in the event of doubt or dispute relating to the interpretation or implementation of any of the foregoing clauses, the same shall be settled by the mutual negotiation, failing which the parties shall resort to arbitration under The Arbitration and Conciliation Act, 1996."

10. Invoking the said clause 14 of the Agreement, the applicant had sent a legal notice on 10.10.2018 to the respondents to refer the matter to the Arbitrator, however, there was no response from the second respondent.

11. Under Section 11(6) of the Arbitration and Conciliation Act, 1996, if there is a written agreement between the parties, where there is an Arbitration Clause and if any one of the party invoking such Arbitration Clause referred the issue arose between the parties, out of the said agreement, if the other party does not come forward to refer the matter to the Arbitral Tribunal as contemplated under the Agreement, then it is open to the party to the agreement to approach this Court and seek indulgence of this Court for appointment of independent Arbitrator.

12. Here in the case in hand, there is a written agreement between the parties, where there is an Arbitration Clause which has been rightly invoked by the applicant who is the party to the agreement. Before the second respondent, even though written request has been made on 10.10.2018 by the applicant, the second respondent has not come forward to accede, therefore, this Court is inclined to pass the following order:

"i) In order to resolve the issue raised between the parties, Mr.M.Muthusamy, learned Senior Advocate having office at No.277, New Additional Law Chamber, High Court Campus, Chennai 600 104 (Mobile No.94440 42965) is appointed as Sole Arbitrator.

R.SURESH KUMAR, J

vji

(ii) The learned Arbitrator shall enter upon the reference immediately and to proceed in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses, which shall be borne by both the parties equally."

13. With these directions and appointment of Arbitrator, this Original Petition is ordered accordingly.

27.04.2019

vji

Index:Yes / No

Speaking / Non speaking order

सत्यमेव जयते

WEB COPY**O.P.No.869 of 2018**