

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07 / 09 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CMA NO.1591 OF 2018

AND

CMP NO.12597 OF 2018

W.Rajesh

... Appellant

.Vs.

M/s.New Link Overseas Finance Ltd.,
Rep. By its Managing Director A.Namasivayam
Mamatha Complex, Second Floor,
No.25, Whites Road, Royapettah,
Chennai - 600 014.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 37(2) of Arbitration and Conciliation Act, 1996, against the order dated 11.06.2018 passed in M.P.No.1 of 2018 in CP (NOFL) 1 of 2018 before the Sole Arbitrator Sri.N.Muthukumaran at Chennai.

For Appellant : Mr.L.Damodaran

For Respondent : Mr.N.Premkumar

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the order dated 11.06.2018 passed by the Sole Arbitrator under Section 37(2) of the Arbitration and Conciliation Act, 1996.

2.The appellant filed an application before the Arbitrator under Order XXX Rule 8 CPC with regard to the maintainability of the claim petition against appellant.

3.As per Order XXX Rule 8 CPC, any Partner of a Partnership Firm is entitled to appear under protest denying that he was a Partner at any material time. On such appearance, it shall be decided as to whether such person is a Partner of the Firm and

is liable. If it is held that such person is a Partner at the material time, he shall not preclude the said person from filing the defense denying the liability of the Firm in respect of the claim.

4. In the present appeal, the appellant would contend that he had retired from the Partnership on 23.09.2009 and the Firm was reconstituted by inducting two new Partners. Thereafter, the Partnership is carried on by the new Partners. Therefore, he should not have been impleaded as a party to the arbitral proceedings. The Arbitrator after elaborately considering the materials placed before him has held that the appellant has not followed the procedure laid down under Section 32 of the Partnership Act, 1932 and there is no valid proof that he retired from the Partnership Firm.

5. I have gone through the materials placed before the Court.

6. On a perusal of the documents annexed to the typed set filed by the appellant, a legal notice dated 04.04.2011, wherein it is seen that the appellant was shown as a Partner of the respondent Firm and that his liability as a Partner of the respondent Firm was also specifically mentioned. In reply to the said legal notice, the appellant, in his reply dated 18.04.2011 has categorically stated that he has discharged a sum of Rs.2,64,41,148/- (Rupees Two Crores Sixty Four Lakhs Forty One Thousand One Hundred and Forty Eight Only) towards loan amount and had undertaken to settle the balance. There is no denial of his continuance of a Partner of M/s. East West Resorts. Apart from this, there are other documents executed by the appellant taking liability on behalf of M/s. East West Resorts after the alleged date of retirement. Those documents show that the appellant continued as Partner of M/s. East West Resorts. The Arbitral Tribunal has rightly held that the appellant has not legally retired from the firm viz., M/s. East West Resorts.

7. Even assuming that he had executed various documents, on behalf of M/s. East West Resorts, the onus is on the appellant to prove that he has retired from the Partnership Firm and the same was duly registered with the Registrar of Firms. But, as found by the Arbitral Tribunal, the appellant has failed to follow the procedure laid down under Section 32 of the Partnership Act, 1932 and failed to prove that he has actually retired from the Partnership business. Therefore, I do not find any infirmity in the order passed by the Arbitral Tribunal.

8. In such circumstances, the Civil Miscellaneous Appeal does not merit any consideration and accordingly, stands dismissed. However, it is always open to the appellant to raise all the

defenses with regard to his liability. No costs. Consequently,
connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

+1cc to Mr.N.Prem Kumar, Advocate, Sr.No.29037
+1cc to Mr.L.Dhamodaran, Advocate, Sr.No.29474
+1cc to Mr.N.Prem Kumar, Advocate, Sr.No.29037[30/09/2020]

CMA NO.1591 OF 2018

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