

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:04.02.2020

Coram:

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

Civil Suit No.598 of 2018

and

A.No.208 of 2019

S.E.Mohamed Rizwanullah Saheb,
S/o S.A.Mohamed Ehsanullah Saheb
Partner, Shaik Ismail & Son,
Residing at No.4, Mottai Garden 10th lane,
Old Washermanpet,
Chennai 600 021.

.. Plaintiff

/versus/

1.Shaik Ismail & Son,
No.6, Ramanuja Iyer Street,
Old Washermanpet,
Chennai 600 021,
Rep.by its Managing Committee.

2.S.A.Mohamed Azmathullah Saheb,
S/o late Hajee S.A.Mohamed Amanullah Saheb,
Partner, Shaik Ismail & Son.

3.S.A.Mohamed Ehsanullah Saheb,
S/o late Hajee S.Abdul Azeez Saheb,
Partner, Shaik Ismail & Son.

4.S.A.Mohamed Habibullah Saheb,
S/o late Hajee S.Abdul Azeez Saheb,
Partner, Shaik Ismail & Son.

5.S.A.Mohamed Saleemullah Saheb,
S/o late Hajee S.A.Mohamed Amanullah Saheb,
Partner, Shaik Ismail & Son.

6.S.A.Mohamed Razullah Saheb,
S/o late Hajee S.A.Mohamed Abdullah Saheb,
Partner, Shaik Ismail & Son.

7.S.A.Mohamed Nasrullah Saheb,
S/o late Hajee S.A.Mohamed Abdullah Saheb,
Partner, Shaik Ismail & Son.

8.S.A.Mohamed Sayeedullah Saheb,
S/o late Hajee S.A.Amanullah Saheb,
Partner, Shaik Ismail & Son.

9.S.A.Mohamed Salamullah Saheb,
S/o late Hajee S.A.Amanullah Saheb,
Partner, Shaik Ismail & Son.

10.S.A.Mohamed Faizullah Saheb,
S/o S.A.Mohamed Habibullah Saheb,
Partner, Shaik Ismail & Son.

11.S.H.Mohamed Hamidullah Saheb,
S/o S.A.Mohamed Habibullah Saheb,
Partner, Shaik Ismail & Son.

12.S.H.Mohamed Inamullah Saheb,
S/o S.A.Mohamed Habibullah Saheb,
partner, Shaik Ismail & Son.

13.S.E.Mohamed Irfanullah Saheb,
S/o S.A.Mohamed Ehsanullah Saheb,
Partner, Shaik Ismail & Son.

14.S.E.Mohamed Salman Saheb,
S/o S.A.Mohamed Ehsanullah Saheb,
Partner, Shaik Ismail & Son.

15.S.K.Mohamed Shafiullah Saheb,
S/o late Hajee kaleemullah Saheb,
Partner, Shaik Ismail & Son.

16.S.S.Mohamed Fahed Saheb,
S/o late Mohamed Sowkathullah Saheb
Partner, Shaik Ismail & Son.

.. Defendants

Civil Suit filed under Order VII, Rule 1 C.P.C read with Order XXIII, Rule 1 of O.S.Rules read with Order IV, Rule 1 of O.S.Rules read with Section 44 of the Partnership Act read with Section 2(1)(c)(xv) and Section 7 of the Commercial courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015 praying to pass a judgment and decree:(a)that the said 1st defendant firm under the name and style of Shaik Ismail & Son constituted under the deed of partnership dated 16th July 2010; be dissolved from the date of this plaint; (b)that the assets of the 1st defendant firm consequent on dissolution, may be realised and that each party may be ordered to pay into Court any balance due from upon such partnership account, and that the debts and liabilities of the said partnership may be discharged, and that the costs of the suit may be paid out of the

partnership assets and that any balance remaining of such assets, after such payment and discharge and the payment of the said costs may be divided between the plaintiff and defendants, according to the terms of the said articles (for deed or agreement) and agreement or that, if the said assets shall prove insufficient, the plaintiff and the defendants 2 to 16 may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities and costs; (c) appoint a receiver or receivers to take charge of the 1st defendant firm and to render accounts, ascertaining the shares of the partner and disburse the same to the plaintiff; (d) for costs of the suit.

For Plaintiff : Mr. T. Rajkumar Paul, Sr.C. for
M/s Paul & Paul

For Defendants : Mr. T. K. Ramkumar for
M/s Ram and Rajan & Associates
for D1, D3 to D15

Mr. M. S. Krishnan, Sr.C. for

M/s Shah and Shah for D2 & D16.

J U D G M E N T

Heard the learned counsel appearing for the plaintiff as well as the defendants.

2.The parties have arrived at understanding to settle their dispute amicably in terms of the Memorandum of Understanding entered between them on 23.01.2020. The said Memorandum of Understanding is extracted as below:

i.The parties of the first part will be given 3 months tentative time from this date (i.e.) till 23.04.2020 to understand the sales volume in all the areas in Prakasam @ Ongole District, Andhra Pradesh.

ii. Both the parties herein mutually agree and undertake that all the cases that are initiated against each other and that are now pending will be withdrawn by the respective parties with immediate effect. The respective parties undertake to file necessary applications, petitions or letters in writing to withdraw the pending cases immediately on signing this MOU.

iii.All the parties herein have agreed to the suggestions of the mediators to appoint Mr.Sahabudeen, as the Auditor of the firm from this date who will look after all the monthly accounts of the business of the firm from this date.

iv.The parties herein have consented and

entrusted the work of appointment of an independent person to the mediator Mr.Nazimudeen, who will appoint any independent person, and such person appointed by Mr.Najmudeen will look after the accounts of the firm who will visit all the branches of the firm to inspect the business affairs and accounts.

v.The parties have agreed to report any queries with respect to the account of the firm to the auditor Mr.Salaudeen appointed as per the agreed terms of this MOU. The said appointed auditor will clarify any such queries raised and the clarification provided by the appointed auditor would be confirmed to be proper and correct by the mediators shall be final and binding on all the parties herein.

vi.It is further agreed by the first and second parties herein shall not have any personal interaction with each other.

vii.It is further agreed that no party will make any allegations against the other party, also will not make any comment/allegations against the other party to any common friends or relatives. If any of the party have any grievance against each other they are entitled to report their grievance only to the above said mediators in whose

presence this MOU is signed and the mediators will resolve any such grievance with a solution which shall be final and binding on all the parties.

viii.It is further agreed at the end of 3 months period agreed in clause 1 above, the parties of the first herein shall inform the 40% of the territory in Prakasam @ Ongole District areas in respect of which they are willing to take over the business operations and on such 40% of the territory in Prakasam @ Ongole District, Andhra Pradesh that would be specified in writing by the party of the first part to the mediators Mr.Najmudeen, Mr.Hameed and Mr.Nawaz, who shall then decide and a lot the territory of business operation to the party of first party and to the party of the second part.

ix.It is further agreed by the party of the first party that they will sign the cheques of the firm that would be sent to then with supporting vouchers for their signatures.

x.It is further agreed that if any other issues/disputes that are not covered under the clauses of this MOU, the same shall also be resolved only through the help of the above said mediators Mr.Nazimudeen and Mr.Hameed and Mr.Nawaz and any decision arrived by the

mediators shall be final and binding on all the parties herein.

3. According to the terms of the understanding, the parties have decided to withdraw the cases initiated against each other and now pending. Further, they have also decided if any other issue/dispute is not covered under the Clauses of this Memorandum of Understanding, the same shall be resolved only through the help of the Mediators viz., Mr.Najmudeen Mr.Hameed and Mr.Nawaz and the decision of the Mediators will be final.

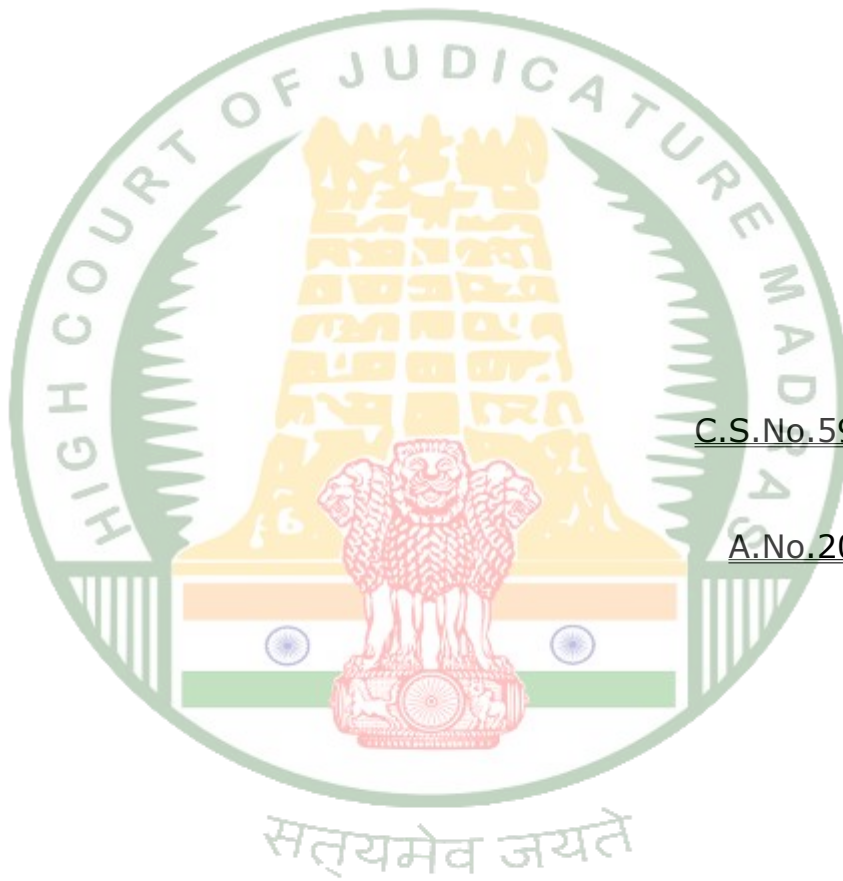
4. In view of the above understanding between the parties, the civil suit is dismissed as settled out of Court. The terms of the Memorandum of Understanding shall form part of the decree. The Registry is directed to refund the Court fee as per law to the plaintiff. No costs. Consequently, connected Miscellaneous Petition is closed.

Index:yes/no
Speaking order/non speaking order
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