

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2020

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THE HON'BLE MR.JUSTICE M.SUNDAR

O.P.No.475 of 2019

R.Venkatraman

.. Petitioner

Vs.

1.G.K.Dharmarajan (Deceased)

2.Mrs.Savithiri

W/o.Late G.K.Dharmarajan

.. Respondent

(2nd respondent is impleaded as the legal heirs of the deceased respondent as per order dated 26.11.2019)

This Original Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole Arbitrator to enter upon reference and adjudicate the disputes between the petitioner and the respondent arising under the agreement dated 30.01.2015 and pass an award; direct the respondent to pay the cost of the petition and pass such further or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case and thus render justice.

For Petitioner : Mr.S.Ramesh

For Respondent : Mr.K.G.Senthilkumar

ORDER

Mr.S.Ramesh, learned counsel on record for petitioner and Mr.K.G.Senthil Kumar, learned counsel for sole respondent are before this Court.

2. To be noted, instant 'Original Petition' ('OP' for the sake of brevity) was initially filed by arraying one G.K.Dharmarajan, as the sole respondent. Instant OP was presented in this Court on 20.06.2019. Pending instant OP, Mr.G.K.Dharmarajan died on 22.08.2019.

3. Therefore, an application in A.No.8268 of 2019 was taken out by the petitioner and this application was *inter alia* under Section 40(1) of 'The Arbitration and Conciliation Act, 1996 (26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity. This application being A.No.8268 of 2019 was to bring on record spouse of Mr.G.K.Dharmarajan as a respondent in instant OP. This application was allowed by predecessor Hon'ble Judge vide order dated 26.11.2019. Therefore, Ms.Savithiri, wife of late Mr.G.K.Dharmarajan is now the contesting respondent in instant OP. In other words, the lis is now between petitioner R.Venkatraman and Ms.Savithiri, wife

of late G.K.Dharmarajan.

4. The fulcrum of instant OP is an agreement dated 30.01.2015 and there is no dispute or contestation as between the parties that there is an arbitration clause in this agreement and that the arbitration clause is clause 5. In other words, clause 5 of this agreement dated 30.01.2015 is now the arbitration agreement between R.Venkatraman and Ms.Savithiri, wife of late Mr.G.K.Dharmarajan, being an arbitration agreement within the meaning of Section 7 of A and C Act. To be noted, there is no dispute or contestation between both the learned counsel before this Court on this aspect of this matter.

5. Furthermore, the task of disposal of instant OP has become fairly simple owing to the stand taken by both learned counsel. Both learned counsel make a common request that a sole arbitrator may please be appointed for entering upon reference, adjudicating, resolving the arbitral disputes between the aforesaid parties and pass an award.

6. Be that as it may, notwithstanding the stand of both the learned counsel, this Court makes it clear that this Court has reminded itself of ***Duro Felguera principle*** reiterated in ***Mayavati Trading principle***. ***Duro Felguera***

principle was laid down by Hon'ble Supreme Court in **Duro Felguera, S.A. versus Gangavaram Port Limited** reported in **(2017) 9 SCC 729**. Relevant paragraphs in **Duro Felguera** case law are Paragraphs 47 and 59 and the same read as follows:

'47. What is the effects of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as 'the 2015 Amendment') with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the 1996 Act") is the crucial question arising for consideration in this case.'

*'59. 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 Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in [Section 11](#) (6A) ought to be respected. '*

7. Mayavati Trading principle was laid down by Hon'ble Supreme Court in **Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman** reported in **(2019) 8 SCC 714**). Relevant paragraph in **Mayavati Trading** case law is Paragraph 10 and the same reads as follows:

'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have

included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA.

(underlining made by this Court to supply emphasis and highlight)

8. A conspectus reading of the two aforementioned principles, leaves this Court with the considered view that the law as declared by Hon'ble Supreme Court is that in the light of sub-Section (6-A) of Section 11 of A and C Act, the contours and confines of instant OP are so limited that this Court would only satisfy itself about *prima facie* existence of an arbitration agreement between the parties. The narrative thus far brings to light that there is no disputation or contestation between the parties about the *prima facie* existence of an arbitration agreement between the parties.

9. As alluded to supra, both learned counsel request for appointment of an arbitrator. Therefore, this Court disposes of instant OP by appointing Mr.M.Nandan, District Judge, (Retd.), No.71, MIG IV Main Road, TNHB, Nolambur, Phase-II, Mugappair West Garden, Chennai - 600 031 as sole arbitrator, who shall enter upon reference qua arbitral disputes that have

arisen between the aforesaid R.Venkatraman and Ms.Savithiri, wife of late G.K.Dharmarajan, vide agreement dated 30.01.2015, and pass an award in accordance with A and C Act and more particularly in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules, 2017, in the Madras High Court Arbitration Centre under the aegis of this Court.

10. OP is disposed of on above terms. There shall be no order as to costs.

29.01.2020

Speaking/Non-Speaking order

Index : Yes/No

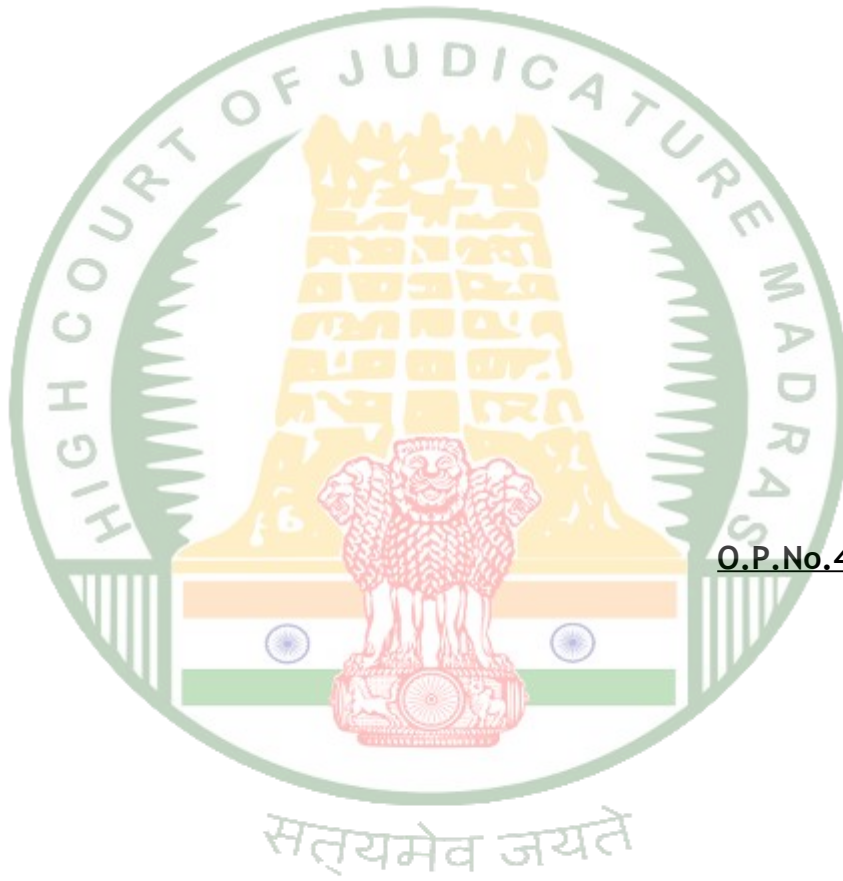
Internet: Yes/No

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Note: Registry is directed to send a copy of this order to Mr.M.Nandan, District Judge, (Retd.), No.71, MIG IV Main Road, TNHB, Nolambur, Phase-II, Mugappair West Garden, Chennai - 600 031, forthwith.

M.SUNDAR, J.

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