

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-02-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.Nos.4465, 4467 to 4469 of 2019

And

C.M.P.Nos.25291, 25293, 25294 and 25295 of 2019

1.Mr.V.G.Santhosam
2.Mr.V.G.P.Ravidas
3.Mr.V.G.P.Rajadas
4.Mr.V.G.P.Babudas

.. Appellants in all CMAs

vs.

1.Mrs.Shanthi Gnanasekaran
2.Mr.V.G.P.Prasaddas
3.Mr.V.G.P.Murphydas
4.Mr.V.G.S.Vinodh Raj
5.Mr.V.G.Selvaraj
6.Mr.V.G.S.Rajesh Alias Amaladas Rajesh

.. Respondents in all CMAs

These Civil Miscellaneous Appeals are preferred under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 to set aside the impugned orders dated 02.11.2019 passed by the learned Arbitrator in M.A.Nos.4 of 2019 in Arbitration Claim No.1 of 2019, 4 of 2019 in Arbitration Claim No.3 of 2019, 4 of 2019 in Arbitration Claim No.2 of 2019 and 4 of 2019 in Arbitration Claim No.4 of 2019.

For Appellants in all CMAs : Mr.S.R.Rajagopal
for M/s.Ojas Law Firm.

For Respondent-1 : Mr.AL.Somayaji,
Senior Counsel for

Mr.B.Nedunchezhiyan.

For Respondents-4&5 : Mr.H.Karthik Seshadri

For Respondent-6 : Mr.R.Saravanakumar

COMMON JUDGMENT

The lis on hand arose in result of the orders passed by the sole Arbitrator on 02.11.2019 in M.A.No.4 of 2019. The sole Arbitrator passed orders, impleading the first respondent Mrs.Shanthi Gnanasekaran to participate in the adjudicative process in Arbitration Claim Nos.1, 3, 2 and 4 of 2019. Challenging the said impleadments, the Civil Miscellaneous Appeals are filed both on factual and on legal grounds.

2. THE COMMON FACTS IN BRIEF:

The appellants state that the partnership firm M/s.V.G.P. Beach Housing was originally formed on 27.03.1979 by and between late Mr.V.G.Panneerdas, Mr.V.G.Santhosam, Mr.V.G.Selvaraj, Mr.V.G.P.Ravidas and Mr.V.G.P.Rajadas. On 16.12.1982, the partnership firm was reconstituted with the induction of two new partners, namely, Mr.V.G.P.Babudas and Mr.V.G.S.Rajesh and thereby every partner was entitled to 1/7th of the net profits in accordance with

the Clause 9 of the Partnership Deed dated 16.12.1982.

3. The abovesaid Partnership Deed states that upon the death of one of the partners, the nominees of the deceased partner would be entitled to absolute rights of that partner. Therefore, upon Mr.V.G.Panneerdas's death on 07.05.1988, his nominee (and wife) late Mrs.Parijatham became the sole successor of his share in the profits as in accordance with Clause 13 of the Partnership Deed dated 16.12.1982. However, vide Partnership Deed, dated 07.05.1988, late Mrs.P.Parijatham along with the original six partners of the partnership firm M/s.V.G.P. Beach Housing, reconstituted the partnership firm in accordance with the existing partners along with the induction of two more new members i.e., Mr.V.G.P.Prasaddas and V.G.P.Murphydas, therefore, leaving every partner entitled for 1/9th share in the partnership firm.

4. On 25.08.1992 late Mrs.Parijatham died nominating Mr.V.G.P.Ravidas as her nominee of her 1/9th share in net profit as specified in Clause 13 of the Partnership Deed dated 07.05.1988. However, upon the demise of late Mrs.Parijatham with the concurrence of all the partners, they had reconstituted the Partnership Deed dated

27.08.1993 and inducted Mr.V.G.S.Vinodhraj as a partner in the firm. The partners thereby decided to retain the shares of every partner to 1/9th share in the net profit. It is pertinent to note that the sons of late Mr.V.G.Panneerdas are not entitled to anything more than 1/9th of the share in the net profit and it is Mr.Vinodhraj who became the sole beneficiary of 1/9th share of late Mrs.Parijatham.

5. The share of late Mr.V.G.Panneerdas was transferred to late Mrs.Parijatham after which, Mr.V.G.Vinodhraj became the sole beneficiary of the 1/9th share as the partnership firm which was unanimously reconstituted vide Partnership Deed dated 27.08.1993. The contractual agreement between the parties extensively pave way to Clause 13, wherein the partners had to nominate their beneficiaries. Thus, only the nominees are entitled to net profits and the first respondent Mrs.Shanthi Gnanasekaran is not entitled to any rights or claim as the legal heir of late Mr.V.G.Panneerdas.

6. Late Mr.V.G.Panneerdas decided to include all the male members of the partnership firm and other businesses when he was alive, his daughters were married and were settled sufficiently to live lavishly in their matrimonial homes. Late Mr.V.G.Panneerdas decided

to leave his legacy of business with his sons who have been contributing to the revenue and net profit of the partnership firm for the past 37 years.

7. Mr.V.G.Selvaraj, Mr.V.G.S.Vinodhraj and Mr.V.G.S. Rajeshbegan to illegally deal with the partnership firms' property and alienated and created encumbrances over several properties belonging to the partnership firms in dispute. Therefore, the appellants in the present Civil Miscellaneous Appeals approached this Court and filed an application under Section 9 of the Arbitration and Conciliation Act in Original Application Nos.81, 82 and 84 of 2018, prayed for an order of interim injunction restraining the aforementioned partners from alienating or encumbering the properties of the partnership firms either by the partners themselves or through any other persons.

8. This Court passed an order on 05.02.2018, granting an interim injunction and the said interim order was extended from time to time till 10.04.2018. The appellants had further filed Original Petition in O.P.Nos.577 to 579 of 2018 under Section 11 of the Arbitration Act for appointment of an Arbitrator. This Court passed an order on 19.06.2019, appointing the Hon'ble Mr.Justice K.Kannan,

Judge (Retired), Punjab and Haryana High Court, to adjudicate the disputes inter se the parties and the first hearing was also held on 07.07.2019.

9. Upon initiation of arbitration proceedings, the first respondent Mrs.Shanthi Gnanasekaran filed an impleading petition and the Arbitral Tribunal consisting of the sole Arbitrator, passed an order dated 02.11.2019, impleading the first respondent as a party to the subject matter in dispute. The said order provided a cause for filing the present Civil Miscellaneous Appeals under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996.

10. The first respondent, who is contesting these Civil Miscellaneous Appeals filed petitions for impleadment before the Arbitrator on 26.09.2019, stating that the facts regarding the Partnership Deed dated 16.12.1982 and further admitted after the demise of her father Mr.V.G.Panneerdas and her mother Mrs.Parijatham was entered as a nominee by her father and subsequently included as partner in Mr.V.G.P.Housing by way of a Deed of Partnership dated 07.05.1988. The reconstituted Partnership Deeds are admitted by the first respondent Mrs.Shanthi Gnanasekaran

and the main contention raised by the first respondent before the Arbitrator was that Mr.V.G.Panneerdas ought to have included his daughters as partners in the partnership firm businesses, as his legal heirs are entitled for equal shares in profits and in the partnership firm businesses. The entire capital was invested by their father Mr.V.G.Panneerdas. None of the brothers of the fourth respondent and the legal heirs of Mr.V.G.Panneerdas had their own source of income, but were all party in the family business, thereby leaving no doubt with regard to the capital invested by the father into the partnership firm businesses. The entire partnership firm businesses were intended to be run as a family business and thus, it can be very well seen that at the time of reconstitution of each of the partnership firms dated 25.08.1993, 27.08.1993 and 01.10.1994 only the male lineal descendants of Mr.V.G.Panneerdas, who have attained majority were made partners, which by itself would be illegal and unlawful.

11. It is contended by the first respondent that the male descendants of Mr.V.G.Panneerdas along with Mr.V.G.Santhosam and Mr.V.G.Selvaraj had all these years kept the unilateral, illegal, reconstitution as a secret and now a dispute rose among them, the entire illegal activities committed by the sons of Mr.V.G.Panneerdas

has come to light. The first respondent has stated that she came to know about all such illegality of her process when the dispute arose between them. The first respondent admits all other facts regarding the reconstitution of the partnership firm and claiming right in respect of the profits derived from and out of the partnership firm, which were originally constituted by her father and as a legal heir, she is entitled for the same. It is further contended that in the event of not impleading the first respondent in the arbitral proceedings, irreparable loss would be caused and the rights of the first respondent would be infringed. With the abovesaid contention, the petition is filed before the sole Arbitrator for impleadment. As regards the other respondents 2 to 6 are concerned, they have no serious objection for the impleadment of the first respondent in the arbitral proceedings and therefore, they have not contested the case seriously.

ARGUMENTS ADVANCED ON BEHALF OF THE APPELLANTS:

12. It is contended that there is no valid agreement between the first respondent and the persons, who are partners in the partnership firm in relation to the subject matter of arbitration and the first respondent Mrs. Shanthi Gnanasekaran is not a party to the Partnership Deed dated 27.08.1993, which is in dispute before the

learned Arbitrator in the Arbitral Tribunal and the claim if any are not maintainable therein.

13. The agreement in relation to the subject matter of arbitral proceedings is the Partnership Deed dated 27.08.1993, which was reconstituted and entered into 26 years prior to the dispute raised by the first respondent is barred by limitation as the cause of action for the first time arose would be on the death of Mr.V.G.Panneerdas on 07.05.1988, his nominee (and wife) late Mrs.Partijatham and she became the sole successor of his share in the net profit as in accordance with Clause 13 of the Partnership Deed dated 16.12.1982. However, vide the Partnership Deed dated 07.05.1988, late Mrs.Parijatham along with the original six partners of the partnership firm of M/s.VGP Beach Housing, reconstituted the partnership firm in concurrence with the existing partners and inducted two more new members. The cause of action for the second time arose when late Mrs.Parijatham died, nominating Mr.V.G.P.Ravidas as her nominee of her 1/9th share in net profit as specified in Clause 13 of the Partnership Deed dated 07.05.1988. However, upon the demise of late Mrs.Parijatham with the concurrence of all partners, they had reconstituted the Partnership Deed dated 27.08.1993 and inducted

Mr.V.G.S.Vinodhraj as a partner in the firm. The partners thereby decided to retain the share of every partner to 1/9th share in the net profit. It is pertinent to note that the sons of late Mr.V.G.Panneerdas are not entitled to anything more than their 1/9th of the share in the net profit and it is Mr.V.G.S.Vinodhraj, who has been identified to hold the shares of late Mrs.Parijatham. Section 113 of the Limitation Act, 1963 is applicable to the case and therefore, the petition filed by the first respondent before the Arbitrator is hit by the Law of Limitation.

14. The intent of the partnership firm M/s.V.G.P. Beach Housing was for the partners of the firm to enjoy the net profits and the same is explicitly stated in Clause 9 of the Partnership Deeds dated 27.03.1979, 16.12.1982, 07.05.1988 and Clause 10 of the Partnership Deed dated 27.08.1993. The learned Arbitrator, Arbitral Tribunal has erroneously held that the first respondent may file its statement of claim on or before 16.11.2019. However, the first respondent is not a party to the Partnership Deed and cannot have any claim seeking the dissolution of the partnership as the legal heirs of the deceased partner M/s.V.G.P. Beach Housing, M/s.V.G.P.Investments and M/s.V.G.Panneerdas and Company as concluded by the learned Arbitrator, Arbitral Tribunal. Since the dispute before the learned

Arbitrator, Arbitral Tribunal is arising out of the Arbitration Agreement pertaining to the Partnership Deed dated 27.08.1993, the learned Arbitrator, Arbitral Tribunal ought not to have impleaded the first respondent, who is not a related party to the terms of the said Arbitration Agreement that is the subject matter in dispute.

15. The Arbitral Tribunal erred in holding that the first respondent may be impleaded to the arbitration proceedings, as the learned Arbitrator, Arbitral Tribunal only holds a power to pass interim orders under Section 17 of the Arbitration and Conciliation Act, 1996.

16. The petition to impleadment filed by the first respondent was not filed under Section 17 and therefore the same is liable to be set aside. The learned Arbitrator, Arbitral Tribunal overlooked the facts that the Clause 13 of the Partnership Deed dated 07.05.1988 states that even upon the demise of one of the partners, their nominees are the sole beneficiaries and for their respective shares. Therefore, no question of legal heirship arises. Thus, the Arbitral Tribunal has erred as the first respondent, who is not a nominee of her father or mother, as per Clause 13 of the Partnership Deed dated 07.05.1988, she cannot claim to be inducted as a partner

until and unless all the partners of the firm unilaterally decided to reconstitute the Partnership Deed as in the case of Mr.V.G.S.Vinodhraj. It is contended that at no point in time, does the question of seniority among the legal heirs arose and the first respondent will not have the right to succeed as a legal representative in the firm. The nominees are the sole beneficiaries of their respective shares in accordance with the language and the interpretation of the Partnership Deed whereby the clear intention of the contract was that the nominee shall be the "beneficial nominee" of the shares thereof and no question of legal heirship arises.

17. While it is true that the first respondent is the senior most among the legal heirs of late Mr.V.G.Panneerdas, the first respondent has wrongly relied on the nominee, being a trustee, wherein the intent of the Partnership Deeds dated 27.03.1979, 16.12.1982, 07.05.1988 and 27.08.1993 was that the nominee shall be the beneficiary of late Mr.V.G.Panneerdas' shares as in accordance with the Partnership Deed dated 16.12.1982 and subsequently, late Mrs.Parijatham appointed Mr.V.G.P.Ravidas as her nominee and beneficiary vide Partnership Deed dated 07.05.1988. Therefore, the learned Arbitrator, Arbitral Tribunal erroneously held that the first

respondent, who is neither a party to the Partnership Deed nor a nominee and beneficiary in the Partnership Deed could be impleaded in the present arbitration proceedings.

18. It is contended that the decisions made by the partners unilaterally are valid and legally binding and thus, the unanimous decision of the partners to reconstitute the Partnership Deed dated 27.08.1993 cannot be disputed. When a clause admitting the nominee of the dead partner, i.e., benefactor, into the partnership is in existence, the question of legal heirs does not arise. The said question of legal heirs will subsist only upon the death of a partner without a nominee or in the case where a partner died intestate. The first respondent can only be entitled to equal share of net profit of the benefactors late Mr.V.G.Panneerdas and late Mrs.Parijatham, if her parents had appointed her as their nominee. Therefore, the observation of the learned Arbitrator, Arbitral Tribunal in holding that the first respondent must be impleaded as she is a legal representative is incorrect and detrimental to resolving the subject matter in dispute.

19. It is contended that from an equitable stance, the share in the net profit of the partners who have contributed

extensively towards the growth and development of the partnership firm will be diluted upon the order of the Arbitral Tribunal. The partnership firms have maintained its goodwill and created a better name over time attributable to the efforts of the appellants. The first respondent who has neither contributed to the revenue nor the growth and development of the partnership firms, cannot be held to be entitled to any share in the net profits without being a party to the Partnership Deed. The Arbitral Tribunal further erroneously arrived a conclusion that Section 113 of the Limitation Act, 1963 is not applicable to the case on hand. It is contended that as the daughters of late Mr.V.G.Panneerdas were settled at the time of their marriage and have been living luxurious lifestyle. There is no illegality in respect of creating a partnership firm only through male descendants.

20. It is contended that the Partnership Deeds were reconstituted on several occasions on 25.08.1993, 27.08.1993 and 01.10.1994. The first respondent has not raised a dispute upon the death of late Mrs.Parijatham at which point the Partnership Deeds were reconstituted between the years 1993 and 1994 and therefore, the petition for impleadment is to be rejected also on the ground of limitation. The first respondent got married in the year 1978 during

the lifetime of her father. It is a contractual decision made by the partners and therefore, the first respondent, who was not inducted in the partnership firm as her father Mr.V.G.Panneerdas had not nominated her, is not entitled to participate in the adjudicative process in the arbitration proceedings.

21. The first respondent cannot have any interest or power on the subject matter in arbitral dispute. The observation made by the Arbitrator is that "I do not foreclose any argument at the later stage of the proceedings that the observations made here in the impleadment application have the effect of res judicata in the subsequent stage of proceedings" has no relevance as the Arbitrator cannot allow a party to participate in the adjudicative process without ascertaining their right to participate at the first instance.

22. The Court has the authority to implead persons in accordance with Sections 8 and 9 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator, Arbitral Tribunal has capriciously held that the Tribunal adopts the "wide powers" under Order 1, Rule 10 of the Code of Civil Procedure, which is applicable only in respect of Civil Courts proceedings. It is a settled principle in law that third parties

cannot be impleaded as the first respondent is neither a signatory to the Arbitration Agreement nor has any proper claims arising out of and in relation to the Arbitration Agreement. Thus, the first respondent has no locus standi not only in respect of the claim against M/s.V.G.P.Beach Housing, M/s.V.G.Panneerdas and Company and M/s.V.G.P.Investments and also in any other partnership firm as these are contractual rights and responsibilities binding those parties, who have entered into the partnership at free will.

23. The learned Arbitral Tribunal has miserably failed to take cognizance of the fact that late Mr.V.G.Panneerdas decided to leave his legacy of business with his sons who have been contributing to the revenue and net profit of the partnership firm for the last 37 years. Therefore, the first respondent, who has approached the learned Arbitrator, Arbitral Tribunal with unclean hands and with an intention to wrongfully gain from the said dispute, cannot have any locus standi to participate in the adjudicative process in the arbitral proceedings.

ARGUMENTS AS ADVANCED ON BEHALF OF THE FIRST RESPONDENT:

16/87

24. The learned Senior Counsel appearing on behalf of the first respondent contended that the Arbitrator in clear terms held that all those issues relating to the merits and demerits of the claims set out by the first respondent will be adjudicated at the time of final hearing of the Arbitration Claims and therefore, there is no error as such in respect of impleading the first respondent. The Arbitrator rightly formed an opinion that the first respondent, being a legal heir of late Mr.V.G.Panneerdas, is entitled for such impleadment and she has got interest in respect of the partnership firm. However, the rights or otherwise set out in the pleadings would be adjudicated at the time of hearing of the Arbitration Claims and under these circumstances, the present Civil Miscellaneous Appeals are to be rejected.

25. The learned Senior Counsel mainly contended that the present Civil Miscellaneous Appeals filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 are not maintainable. Section 37 of the Act enumerates that an appeal is maintainable against an order passed by the Arbitrator granting or refusing to grant an interim measure under Section 17 of the Act. Under Section 17 of the Act, interim measures can be ordered by the Arbitral Tribunal. Impleadment of the first respondent cannot be construed as an interim

measure contemplated under Section 17 of the Arbitration Act and therefore, the appeals now filed under Section 37(2)(b) of the Act, are not maintainable. To substantiate the said contention, the learned Senior Counsel reiterated that the interim measures or certain orders which all are passed during the pendency of the arbitral proceedings and impleadment cannot be construed as an interim measure within the meaning of Section 17 of the Act. Thus, the Civil Miscellaneous Appeals are not maintainable.

26. By soliciting the attention of this Court, the learned Senior Counsel cited the findings made by the Arbitrator in the order impugned, wherein the Arbitrator in clear terms held that the point of limitation, exclusion of the first respondent from the arbitral proceedings and right of all the parties are to be decided finally when the issue of dissolution or otherwise of the partnerships are undertaken through arbitral adjudication. When the Arbitrator himself is clear about the scope of the Act and the jurisdiction and competency, has made a finding that all such issues involving the rights of the parties to be adjudicated during the arbitral proceedings, then there is no reason to entertain the present Civil Miscellaneous Appeals filed against the impleadment of the first respondent in the

arbitral proceedings. The learned Senior Counsel emphasised that the first respondent, being a legal heir of late Mr.V.G.Panneerdas, and now the arbitration proceedings are between the sons and other legal heirs of late Mr.V.G.Panneerdas, then the first respondent became a necessary party to the arbitral proceedings and she is also entitled for an opportunity to put forth her case and right before the Arbitrator for the purpose of effective adjudication of the arbitral proceedings.

27. The learned Senior Counsel further submitted that even the point of limitation raised by the appellants will be decided by the Arbitrator at the time of hearing the case on merits. Therefore, the very contentions raised by the appellants are untenable and impleadment of the first respondent would not cause any prejudice to the appellants in the matter of adjudication of merits and therefore, the Civil Miscellaneous Appeals are to be dismissed in limine.

28. The learned Senior Counsel relying on the judgment of the Hon'ble Supreme Court of India in the case of **Chloro Controls India (P) Ltd vs. Severn Trent Water Purification Inc. [(2013) 1 SCC 641]**, wherein in paragraph-70, held that normally, arbitration takes place between the persons who have, from the outset, been

parties to both the arbitration agreement as well as the substantive contract underlining that agreement. But, it does occasionally happen that the claim is made against or by someone who is not originally named as a party. These may create some difficult situations, but certainly, they are not absolute obstructions to law/the arbitration agreement. Arbitration, thus, could be possible between a signatory to an arbitration agreement and a third party. Of course, heavy onus lies on that party to show that, in fact and in law, it is claiming "through" or "under" the signatory party as contemplated under Section 45 of the 1996 Act.

29. The learned Senior Counsel relied on the "Group of Companies Doctrine" elaborated by the Apex Court in the abovesaid judgment. The Apex Court held that this doctrine has developed in the international context, whereby an Arbitration Agreement entered into by a Company, being one within a group of companies, can bind its non-signatory affiliates or sister or parent concerns, if the circumstances demonstrate that the mutual intention of all the parties was to bind both the signatories and the non-signatory affiliates. This theory has been applied in a number of arbitrations so as to justify a tribunal taking jurisdiction over a party who is not a signatory to the

contract containing the arbitration agreement.

30. The Hon'ble Supreme Court of India, in the judgment, cited supra, in paragraphs-72 and 73 held as under:-

"72. This evolves the principle that a non-signatory party could be subjected to arbitration provided these transactions were with group of companies and there was a clear intention of the parties to bind both, the signatory as well as the non-signatory parties. In other words, "intention of the parties" is a very significant feature which must be established before the scope of arbitration can be said to include the signatory as well as the non-signatory parties.

73. A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject-matter and the agreement between the parties being a composite transaction. The transaction should be of a composite nature where performance of the

mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute. Besides all this, the court would have to examine whether a composite reference of such parties would serve the ends of justice. Once this exercise is completed and the court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed."

31. The learned Senior Counsel is of the firm opinion that in an arbitral proceedings, there is no impediment for impleading a third party. However, mere impleadment would not confer any right on such third party. All such rights are to be adjudicated by the Arbitrator during the hearing of the arbitral proceedings and therefore, the very impleading need not be interfered with and the Arbitrator is to be allowed to continue the arbitral proceedings by adjudicating the merits by providing opportunity to all the parties. Therefore, the present Civil Miscellaneous Appeals are devoid of merits and are liable to be dismissed.

32. The first respondent has narrated certain important events with respect to the entire dispute between the appellants and the respondents 2 to 6, wherein it is contended that the house property which stood in the name of late Mr.V.G.Panneerdas was transferred in the name of Mr.V.G.P.Ravidas by the sons of Mr.V.G.Panneerdas, representing as the legal heirs without obtaining No Objection Certificate from the daughters of Mr.V.G.Panneerdas.

33. It is contended that the property, belongs to Mr.V.G.Panneerdas, has been dealt with by the sons without the consent from the daughters, who are also having equal shares in respect of their father's property. The appellants are having complete control over M/s.V.G.P. Housing Pvt Limited and did not transmit the rightful shares of the first respondent and in this regard, an application under Section 58(3) of the Companies Act, 2013 is also pending before the National Company Law Tribunal vide C.A.No.1443 of 2019. The appellants had obtained Power of Attorney from Mrs.Usha Rajkumar in respect of a property in her name and the same was sold through M/s.V.G.Panneerdas and Company by promoting a layout wherein the first respondent has not been provided with any share.

34. Narrating all the above facts and circumstances, the first respondent contended that the brothers are acting against the interest of the daughters and the same shows the intention on the part of the sons of Mr.V.G.Panneerdas not to share the proceeds earned by their father Mr.V.G.Panneerdas. It is stated by the first respondent that all the properties and layouts that have been promoted by M/s.V.G.P. Group of Companies under the name and style or through any entity were all acquired during the lifetime of Mr.V.G.Panneerdas, which were only subsequently sold by the appellants. The first respondent states that the properties were acquired during the lifetime of Mr.V.G.Panneerdas, the intention of the father was always to share the proceeds equally with all the family members, which would be obvious by the original balance sheet filed during the lifetime of Mr.V.G.Panneerdas showing the share application money in the name of 15 family members. After the demise of father and mother of the first respondent, the intention of the appellants had changed completely, as they had decided not to give any share to the daughters, who all are entitled under the Indian Succession Act, 1923.

35. The first respondent states that when there was

disputes between the brothers of Mr.V.G.Panneerdas along with the appellants, the intention of the appellants came to light and therefore, a notice dated 19.03.2019 five legal heirs of Mr.V.G.Panneerdas namely the daughters and Mr.Murphydas and Mr.Prasaddas, asking them to share all documents relating to partnership firms, companies and individually owned properties of father and mother. There was no reasons from the part of the appellants to the aforesaid letter, as they decided to ignore the same.

36. The first respondent after becoming aware of the fact that there were pending disputes with regard to the partnership firm, which was founded by her father and also in the company in which she had equity shares in the year 1971, sent a notice dated 23.09.2019 to the appellants pointing out the illegal activities of the appellants and oppressive acts of the appellants in withholding the rightful shares of the first respondent in her father's estate.

37. The first respondent and Mrs.Usha Rajkumar had requested the appellants herein on numerous occasions regarding the various partnership firm and companies which were founded by their later father Mr.V.G.Panneerdas, the appellants would at all instances

maintain that the first respondent and Mrs.Usha Rajkumar have no rights over these businesses, however, it was only a mere oral statement and the first respondent was not even shown any of the documents pertaining to the various businesses. It was only after the first respondent obtained these documents from other family members, did she become aware of the fact that the appellants have illegally denied the first respondent of her rightful share over her father's interest in the partnership firm.

38. Respondents 2 to 6 made a submission that they have no objection for the impleadment of the first respondent in the arbitral proceedings.

39. The important issues arose in the lis on hand are that:-

"(1) Whether an Arbitrator under the Arbitration Act, 1996 is empowered to implead a party, who is not a party in the Arbitration Agreement, with reference to the dispute raised between the parties through a contract ?

(2) Whether an Arbitrator is empowered to exercise the "inherent power" and "wide power" under Order I, Rule 10 of the Code of Civil Procedure for the purpose of impleading a

person in the arbitration proceedings which is otherwise contractual in nature ?

(3) Whether an appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 is maintainable against an order passed by the Arbitrator, allowing the impleading petition filed by a person to participate in the adjudicative process ?

(4) Whether an Arbitrator is empowered to decide the legal right of a party to inherit the property or the partnership firm under the Succession Laws in a contracted arbitration proceedings between the partners with reference to the Arbitration Agreement ?”

*(5) Whether the principles laid down by the Hon'ble Supreme Court of India in the case of **Chloro Controls India (P) Ltd vs. Severn Trent Water Purification Inc. [(2013) 1 SCC 641]**, would be applicable with reference to the facts and circumstances of the present case, which is a domestic arbitral proceedings and the dispute is among the partners.*

WEB COPY

MAINTAINABILITY :

40. Regarding the maintainability of the Civil

Miscellaneous Petitions under Section 37, this Court is of the opinion that there is no express provision under the Act to entertain an impleading petition by the Arbitrator. However, the Arbitrator impliedly entertained the impleading petition under Section 17(1)(ii)(e) of the Act, which states that such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient. This apart, impleading a person in the main arbitration proceeding is an interim measure. Even an independent interpretation with reference to the impugned order passed by the Arbitrator, the first respondent is made to participate in the arbitral adjudications. Therefore, the said impugned order, now under challenge, is to be treated as an interim measure within the meaning of Section 17(1)(ii)(e) of the Act. When the impugned order is an interim measure, permitting a person to implead herself in the arbitration proceedings, then Section 37 will come into force and accordingly, the present Civil Miscellaneous Appeals are maintainable under Section 37(2)(b) of the Act.

41. The objections raised by the first respondent is that the present Civil Miscellaneous Appeals are not maintainable and liable

to be rejected in limine. The Arbitrator left open all the issues for adjudication and therefore, it is for the first respondent to place her documents, evidences and arguments before the Arbitrator, enabling him to adjudicate the rights and the issues. It is further contended that the impugned order of impleading the first respondent cannot be construed as an interim measure within the meaning of Section 17 of the Act and therefore, an appeal under Section 37(2)(b) is not maintainable.

42. No order of an Arbitrator can remain as remediless. There is no express provision in the Arbitration Act for the impleadment of the third party. Thus, any such interim application filed for impleadment by a third person is necessarily to be treated as an application under Section 17(1)(ii)(e) of the Act. Once the impleadment is allowed, then the right of appeal cannot be denied. The Arbitrator allowed a third person to a contracted Arbitration Agreement to participate in the arbitral proceedings and such an order of impleadment cannot be construed as a final order in the arbitration proceedings. Therefore, an appeal under Section 37(2)(b) of the Arbitration Act, is entertainable by this Court and consequently, the

point of maintainability raised by the first respondent is devoid of merits and stands rejected.

DISCUSSIONS:

43. Let us now consider the Scheme, purpose and the object of the Arbitration and Conciliation Act, 1996. Section 2 of the Arbitration and Conciliation Act, 1996, provides definitions. Section 2(a) defines the word 'Arbitration' means any arbitration whether or not administered by the permanent arbitral institution'. Section 2(b) defines 'Arbitration Agreement' means an agreement referred to in Section 7. Section 7 deals with Arbitration Agreement and Section 2(e) defines the word 'Court' means "(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes; (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the

arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court.”

44. Section 2(g) defines the word 'legal representative' means “a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting”.

45. The term 'Legal Representative' is well defined in the Arbitration and Conciliation Act, 1996 and therefore, the said definition cannot be further expanded for the purpose of impleadment of any other person other than the person who is falling within the ambit of Section 2(g) of the Arbitration and Conciliation Act, 1996.

46. Section 5 of the Act provides 'extent of judicial intervention' which states that notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in

this Part". Therefore, it is made clear that the judicial intervention is permitted only within the provisions of the Act.

47. Section 7 of the Arbitration and Conciliation Act, 1996 deals with Arbitration Agreement and the same reads as under:-

"Arbitration agreement.—(1) *In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*

(2) *An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.*

(3) *An arbitration agreement shall be in writing.*

(4) *An arbitration agreement is in writing if it is contained in—*

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and

defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

48. Section 8 of the Arbitration and Conciliation Act, 1996 defines power to refer parties to arbitration where there is an Arbitration Agreement. Section 8(1) contemplates that 'a Judicial Authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists".

49. Section 16 of the Arbitration and Conciliation Act,

1996, provides competence of Arbitral Tribunal to Rule on its Jurisdiction, which reads as under:-

"Competence of Arbitral Tribunal to rule on its jurisdiction.—

(1) The Arbitral Tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the Arbitral Tribunal is exceeding the scope of its authority shall be

raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The Arbitral Tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The Arbitral Tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the Arbitral Tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34."

50. Section 17 of the Arbitration and Conciliation Act, 1996 states interim measures ordered by Arbitral Tribunal. Section 21 of the Arbitration and Conciliation Act, 1996, defines commencement of arbitral proceedings and Section 37 of the Arbitration and Conciliation Act, 1996 provides appealable orders. Section 45 of the Arbitration and Conciliation Act, 1996, deals with enforcement of certain foreign awards, which stipulates the power of judicial authority

to refer parties to arbitration.

51. With reference to the above provisions of the Act, the dispute raised in these Civil Miscellaneous Appeals are to be considered.

52. It is a paramount clause found in the Deed of Partnership dated 27.08.1993 entered into between the appellants and the respondents 2 to 6 and the Clause contains and the partners in the said Partnership Deed agreed to resolve their disputes, if any, by recourse to arbitration. The said clause reads as under:-

"13. Any dispute or difference among the partners arising in regard to the construction or terms of this deed or any part thereof or in respect of account or the rights and liabilities of the partners under this Deed or any other matter relating to the partnership whether during or after the partnership shall be referred to arbitration, each party appointing an Arbitrator or the partners mutually agreeing upon to a single Arbitrator or the partners mutually agreeing upon to a single Arbitrator and the provisions of the Indian Arbitration Act, 1940 and any statutory".

53. Relying on the abovesaid Clause of the Partnership Deed dated 27.08.1993, the learned counsel appearing on behalf of the appellants reiterated that any dispute relating to the Deed of Partnership or in respect of the account or the rights and liabilities of partners or any matter relating to the partnership whether during or after the partnership shall be referred to arbitration by appointing a sole Arbitrator.

54. A dispute arose among the partners and therefore as contemplated under Section 21 of the Arbitration and Conciliation Act, a notice was issued by the appellants, invoking Clause 13 of the Partnership Deed and requesting the dispute to be referred to arbitration. There was no consensus amongst the parties, a petition in O.P. No.577 of 2018 was filed under Section 11 of the Arbitration and Conciliation Act, 1996 and this Court by an order dated 31.07.2018, pursuant to the consent of the parties to the proceedings, namely, the partners have referred the matter to the Mediation, As the parties could not arrive at an amicable settlement, an order came to be passed by this Court on 19.06.2019, appointing the Hon'ble Mr. Justice K.Kannan (Retired Judge of Punjab and Haryana High Court) as the

sole Arbitrator to adjudicate the disputes inter se the parties.

55. The learned counsel appearing on behalf of the appellant reiterated that during the pendency of the arbitral proceedings, the first respondent filed an application in M.A.No.4 of 2019, seeking for impleading him as a party respondent in the proceedings. The said impleading petition is allowed by the Arbitrator by an order dated 02.11.2019 in M.A.No.4 of 2019, as against which the present Civil Miscellaneous Appeals are filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996.

56. The learned counsel contended that the Arbitrator is the name given person selected with reference to a person selected/nominated/appointed with reference to determination of controversies, though not judicially, and yet regulated by Law. His powers and duties are prescribed by the Arbitration and Conciliation Act, 1996. His decision is called 'Award' and could be challenged under Section 34 of the Arbitration and Conciliation Act, 1996. Subsequent to the amendment by Act 3 of 2016, which came into force with effect from 23.10.2015, inter alia among other amendments, Section 17 of the Principal Act was substituted. The Act underwent a substantial change.

Thereafter, the Act was again amended by Act 33 of 2019.

57. An Agreement to Arbitrate excludes jurisdiction of National Courts, where the parties have agreed to resolve their disputes by arbitration and they seek to substitute a Private Forum for dispute resolution in place of the adjudicatory institutions constituted by the State. According to "Redfern and Hunter on International Arbitration", the requirement of an agreement to arbitrate in writing is an elucidation of the principle that the existence of such an agreement should be clearly established, since its effect is to exclude the authority of National Courts to adjudicate upon disputes.

58. In respect of the abovesaid contentions, the learned counsel for the appellants referred to Section 2(e) of the Arbitration and Conciliation Act, 1996, which defines (Court) and Section 7 defines Arbitration Agreement and Section 16 provides competence of Arbitral Tribunal to Rule on its jurisdiction and Section 17 deals with interim measures ordered by the Arbitral Tribunal.

59. Relying on the abovesaid provisions, the learned counsel for the appellants emphasised that in the absence of the

Arbitration Agreement amongst the parties, it is improper on the part of the Arbitrator to allow the impleading petition. Admittedly, the first respondent is not a party to the agreement and further she claims right as a legal heir of late Mr.V.G.Panneerdas and it is pertinent to note that after his death, the partnership was reconstituted on several occasions and even as per the Clause in the partnership, a partner is empowered to nominate a person and only through nomination, a partner can be included in the partnership firm and not otherwise. Therefore, in the absence of any Clause for inclusion of a legal heir in the Partnership Deed originally constituted by late Mr.V.G.Panneerdas, the first respondent is not entitled to participate in the arbitration proceedings.

60. Section 17 of the Arbitration and Conciliation Act, 1996, provides interim measures ordered by the Arbitral Tribunal. The impleading petition is entertained under Section 17(1)(ii)(e), which states that "such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient". By invoking the said provision of Law, the Tribunal can pass any order regarding interim measures. There is no express provision for impleadment in the Act. In the absence of any such express provision, the Arbitrator impliedly

could entertain the impleading petition only under Section 17 (1)(ii)(e) of the Arbitration and Conciliation Act, 1996. However, the said provision indicates that the power is to be exercised within the ambit of the Act and cannot be extended so as to exercise an inherent power by invoking the Code of Civil Procedure. Thus, the very findings of the Arbitrator by exercising wide powers under Order I, Rule 10 of the Code of Civil Procedure, he entertained the impleading petition is absolutely untenable and beyond the scope of the arbitral proceedings as well as the Act itself. Any interim measure is to be granted within the scope of the arbitral proceedings and not beyond the dispute raised between the parties for arbitration. Therefore, the very exercise of power to implead a third person who is unconnected with the Partnership Deed is improper and in violation of the very Scheme of the Act itself.

61. It is pertinent to note that Section 2(h) of the Arbitration Act defines "Party means a party to an Arbitration Agreement". When the definition for the word 'Party' is provided under the Act, then no other party other than the party to the "Arbitration Agreement" is entitled to participate in the arbitral proceedings. The term 'Arbitration Agreement' is defined under Section 2(b) as an

agreement referred to in Section 7 of the Act. Section 7(1) of the Act, stipulates that Arbitration Agreement means "an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not." Thus, the Arbitrator has committed an error in interpreting the scope of the Act and allowed the impleading petition in violation of the very Scheme and the provisions of the Act.

62. An analysis of sub-sections (2), (3) and (4) of Section 7 shows that an Arbitration Agreement will be considered to be in writing if it is contained in -

- (a) a document signed by the parties; or
- (b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or
- (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other; or
- (d) a contract between the parties making a reference to

another document containing an arbitration Clause indicating a mutual intention to incorporate the arbitration Clause from such other

document into the contract.

63. Section 2(1)(b) of the Act defines 'Arbitration Agreement' as an agreement referred to in Section 7 and Section 7 provides that an Arbitration Agreement is an agreement between the parties to submit all or any of the disputes to be adjudicated by an Arbitrator in respect of their definite legal relationship whether contractual or not. Section 7 contemplates that the agreement should be in writing and signed by the parties. Therefore, a non-signatory or a third party could not be subjected to arbitration. Only in exceptional cases like the case whether the rights of the parties are flowing under the Arbitration Agreement, third parties could be subjected to arbitration. The Court is required to examine the exceptions from the touchstone of direct relationship of the party signatories to the contract.

64. Section 8 of the Arbitration and Conciliation Act empowers a Judicial Authority to refer parties to arbitration where there is an Arbitration Agreement. Thus, when a lis is brought about by a person and when the same is covered by an agreement between the parties in the lis to be resolved by arbitration, the dispute is required

to be referred to an Arbitrator. Arbitration and Conciliation Act does not oust the jurisdiction of the Civil Court to decide the dispute in case, where the parties to the Arbitration Agreement do not take steps as contemplated under Section 8 of the Act. There is no provision in the Act, when the subject matter of the suit includes other departments, apart from the dispute that is covered by Arbitration Agreement to direct parties to the lis to be referred to arbitration, i.e., there cannot be splitting of causes of action. That apart, there is no provision in the Act as to what is required to be done with certain parties to the lis are not parties to the Arbitration Agreement.

65. In view of the above discussions, when the lis is in respect of the partnership, the first respondent not being a partner or party to the agreement, cannot seek to implead herself to the proceedings. Admittedly, no right whatsoever arises to the first respondent under the Deed of Partnership and cannot be a person having a right in the lis subject matter of arbitration. The contentions of the first respondent is that claim of right of inheritance in respect of the share of her father who was a partner in the partnership under the Deed of Partnership dated 27.03.1979. The father died on 07.05.1988 and the partnership firms were reconstituted. The share of the father

transferred in favour of the mother, namely, late Mrs.Parijatham by nomination, who also died on 16.12.1992. Thereafter, the Partnership Deed was again reconstituted. Therefore, the first respondent cannot be a person interested in the dispute and the differences that arose between the contracting parties. The reference to the Arbitrator is only with regard to the dispute amongst the parties to the Partnership Deed dated 27.08.1993 and thus, the claim of the first respondent does not fall within the dispute or differences to be adjudicated by the learned Arbitrator, Arbitral Tribunal.

66. On the side of the appellants, in order to substantiate the above position, cited certain judgments. In the case of **Sukanya Holdings (P) Ltd. vs. Jayesh H. Pandya [(2003) 5 SCC 531]**, wherein in paragraph-7, the Hon'ble Supreme Court made an observation "The object and purpose of the Act is to avoid multiplicity of proceedings and not to allow two forums simultaneously to proceed with the matter. That judgment and order is challenged in this appeal". In paragraphs 15 and 16 of the judgment, cited supra, the Hon'ble Supreme Court held as under:-

"15.

Therefore, the suit should be in respect of "a

matter” which the parties have agreed to refer and which comes within the ambit of arbitration agreement. Where, however, a suit is commenced — “as to a matter” which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8. The words “a matter” indicate that the entire subject-matter of the suit should be subject to arbitration agreement.

16. The next question which requires consideration is — even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act. In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there

is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed."

67. In the case **Indowind Energy Ltd vs. Wescare (I) Ltd [(2010) 5 SCC 306]**, wherein in paragraphs-10 and 15, the Hon'ble Supreme Court, held as under:-

"10. On the contentions urged the following two questions arise for consideration:

(i) Whether an arbitration clause found in a document (agreement) between two parties, could be considered as a binding arbitration agreement on a person who is not a signatory to the agreement? (ii)

Whether a company could be said to be a party to a contract containing an arbitration agreement, even though it did not sign the agreement containing an arbitration clause, with reference to its subsequent conduct?

15. Wescare puts forth the agreement dated 24-2-2006 as an agreement signed by the parties containing an arbitration agreement but the said agreement is signed by Wescare and Subuthi and not by Indowind.

It is not in dispute that there can be appointment of an arbitrator if there was any dispute between Wescare and Subuthi. The question is when Indowind is not a signatory to the agreement dated 24-2-2006, whether it can be considered to be a "party" to the arbitration agreement. In the absence of any document signed by the parties as contemplated under clause (a) of sub-section (4) of Section 7, and in the absence of existence of an arbitration agreement as contemplated in clauses (b) or (c) of sub-section (4) of Section 7 and in the absence of a contract which incorporates the arbitration agreement by reference as contemplated under sub-section (5) of Section 7, the inescapable conclusion is that Indowind is not a party to the arbitration agreement. In the absence of an arbitration agreement between Wescare and Indowind, no claim against Indowind or no dispute with Indowind can be the subject-matter of reference to an arbitrator. This is evident from a plain, simple and normal reading of Section 7 of the Act."

68. In paragraph-15 of the judgment, cited supra, the

Hon'ble Apex Court in clear terms held that the Arbitration Agreement is signed by Wescare and Subuthi and not by Indowind. It is not in dispute that there can be appointment of an arbitrator if there was any dispute between Wescare and Subuthi. The question is when Indowind is not a signatory to the agreement dated 24-2-2006, whether it can be considered to be a "party" to the arbitration agreement. In the absence of any document signed by the parties as contemplated under clause (a) of sub-section (4) of Section 7, and in the absence of existence of an arbitration agreement as contemplated in clauses (b) or (c) of sub-section (4) of Section 7 and in the absence of a contract which incorporates the arbitration agreement by reference as contemplated under sub-section (5) of Section 7, the inescapable conclusion is that Indowind is not a party to the arbitration agreement.

69. The Hon'ble Supreme Court unambiguously enumerated that "in the absence of an arbitration agreement between Wescare and Indowind, no claim against Indowind or no dispute with Indowind can be the subject-matter of reference to an arbitrator. This is evident from a plain, simple and normal reading of Section 7 of the Act."

70. In the case of **Chloro Controls India (P) Ltd vs. Severn Trent Water Purification Inc. [(2013) 1 SCC 641]**, Scope of jurisdiction while referring the parties to arbitration were considered by the Hon'ble Supreme Court in paragraphs 118, 119, 131.2, 131.3, 131.4 and 133.1, held as under:-

"118. An application for appointment of the Arbitral Tribunal under Section 45 of the 1996 Act would also be governed by the provisions of Section 11(6) of the Act. This question is no more res integra and has been settled by decision of a Constitution Bench of seven Judges of this Court in SBP & Co. vs. Patel Engg. Ltd. [(2005) 8 SCC 618] , wherein this Court held that power exercised by the Chief Justice is not an administrative power. It is a judicial power. It is a settled principle that the Chief Justice or his designate Judge will decide preliminary aspects which would attain finality unless otherwise directed to be decided by the Arbitral Tribunal.

119. In para 39 of the judgment, this Court held as under: (SBP case [(2005) 8 SCC 618] , SCC pp. 660-61)

"39. It is necessary to define what exactly the Chief Justice, approached with an application under Section 11 of the Act, is to

decide at that stage. Obviously, he has to decide his own jurisdiction in the sense whether the party making the motion has approached the right High Court. He has to decide whether there is an arbitration agreement, as defined in the Act and whether the person who has made the request before him, is a party to such an agreement. It is necessary to indicate that he can also decide the question whether the claim was a dead one; or a long-barred claim that was sought to be resurrected and whether the parties have concluded the transaction by recording satisfaction of their mutual rights and obligations or by receiving the final payment without objection. It may not be possible at that stage, to decide whether a live claim made, is one which comes within the purview of the arbitration clause. It will be appropriate to leave that question to be decided by the Arbitral Tribunal on taking evidence, along with the merits of the claims involved in the arbitration. The Chief Justice has to decide whether the applicant has satisfied the conditions for appointing an arbitrator under Section 11(6) of the Act. For the purpose of taking a decision on these aspects, the Chief

Justice can either proceed on the basis of affidavits and the documents produced or take such evidence or get such evidence recorded, as may be necessary. We think that adoption of this procedure in the context of the Act would best serve the purpose sought to be achieved by the Act of expediting the process of arbitration, without too many approaches to the court at various stages of the proceedings before the Arbitral Tribunal."

This aspect of the arbitration law was explained by a two-Judge Bench of this Court in Shree Ram Mills Ltd. vs. Utility Premises (P) Ltd. [(2007) 4 SCC 599] wherein, while referring to the judgment in SBP & Co. [(2005) 8 SCC 618] particularly the above paragraph (para 39) of SBP case [(2005) 8 SCC 618] , this Court held that the scope of order under Section 11 of the 1996 Act would take in its ambit the issue regarding territorial jurisdiction and the existence of the arbitration agreement. The Court noticed that if these issues are not decided by the Chief Justice or his designate, there would be no question of proceeding with the arbitration. It held as under: (Shree Ram Mills case [(2007) 4 SCC 599] , SCC pp. 607-08, para 27)

"27. ... Thus, the Chief Justice has to decide about the territorial jurisdiction and also whether there exists an arbitration agreement between the parties and whether such party has approached the Court for appointment of the arbitrator. The Chief Justice has to examine as to whether the claim is a dead one or in the sense whether the parties have already concluded the transaction and have recorded satisfaction of their mutual rights and obligations or whether the parties concerned have recorded their satisfaction regarding the financial claims. In examining this if the parties have recorded their satisfaction regarding the financial claims, there will be no question of any issue remaining. It is in this sense that the Chief Justice has to examine as to whether there remains anything to be decided between the parties in respect of the agreement and whether the parties are still at issue on any such matter. If the Chief Justice does not, in the strict sense, decide the issue, in that event it is for him to locate such issue and record his satisfaction that such issue exists between the parties. It is only in that sense that the finding on a live issue is given. Even at the cost of repetition we must state that it is only for the

purpose of finding out whether the arbitral procedure has to be started that the Chief Justice has to record satisfaction that there remains a live issue in between the parties. The same thing is about the limitation which is always a mixed question of law and fact. The Chief Justice only has to record his satisfaction that prima facie the issue has not become dead by the lapse of time or that any party to the agreement has not slept over its rights beyond the time permitted by law to agitate those issues covered by the agreement. It is for this reason that it was pointed out in the above paragraph that it would be appropriate sometimes to leave the question regarding the live claim to be decided by the Arbitral Tribunal. All that he has to do is to record his satisfaction that the parties have not closed their rights and the matter has not been barred by limitation. Thus, where the Chief Justice comes to a finding that there exists a live issue, then naturally this finding would include a finding that the respective claims of the parties have not become barred by limitation.”
(emphasis supplied)

Thus, the Bench while explaining the judgment of this Court in SBP & Co. [(2005) 8

SCC 618] has stated that the Chief Justice may not decide certain issues finally and upon recording satisfaction that prima facie the issue has not become dead even leave it for the Arbitral Tribunal to decide.

131.2. The issue of jurisdiction normally is a mixed question of law and facts. Occasionally, it may also be a question of law alone. It will be appropriate to decide such questions at the beginning of the proceedings itself and they should have finality.

131.3. Even when the arbitration law in India contained the provision like Section 34 of the 1940 Act which was somewhat similar to Section 4 of the English Arbitration Act, 1889, this Court in Anderson Wright Ltd. [AIR 1955 SC 53 : (1955) 1 SCR 862] took the view that while dealing with the question of grant or refusal of stay as contemplated under Section 34 of the 1940 Act, it would be incumbent upon the court to decide first of all whether there is a binding agreement for arbitration between the parties to the suit or not.

131.4. Applying the analogy thereof will fortify the view that determination of fundamental issues as contemplated under Section 45 of the 1996 Act at the very first

instance by the judicial forum is not only appropriate but is also the legislative intent. Even the language of Section 45 of the 1996 Act suggests that unless the court finds that an agreement is null and void, inoperative and incapable of being performed, it shall refer the parties to arbitration.

133.1. *Firstly, Sukanya [(2003) 5 SCC 531] was a judgment of this Court in a case arising under Section 8, Part I of the 1996 Act while the present case relates to Section 45, Part II of the Act. As such that case may have no application to the present case."*

71. As far as the judgment of the Apex Court, cited above, the first point to be considered is that His Lordship Swatanter Kumar, J. (as He then was), in His opening paragraph of the judgment, emphatically reiterated that "Leave granted. The expanding need for international arbitration and divergent schools of thought, have provided new dimensions to the arbitration jurisprudence in the international field. The present case is an ideal example of invocation of arbitral reference in multiple, multi-party agreements with intrinsically interlinked causes of action, more so, where performance of ancillary agreements is substantially dependent upon effective

execution of the principal agreement.

72. The abovesaid findings of the Hon'ble Supreme Court of India, in the case of **Chloro Controls India (P) Ltd**, cited supra, is crystal clear that, while invoking an arbitral reference in multiple, multi-party agreements with intrinsically interlinked causes of action, more so, where performance of ancillary agreements is substantially dependent upon effective execution of the principal agreement. Such facts and circumstances would not arise as far as the present lis on hand is concerned. The present lis relates to a domestic arbitral proceedings wherein the Partnership Deed between the appellants and the respondents 2 to 6 are definite and regarding such facts, there is no dispute between the parties, including the first respondent. Therefore, the multi-party agreement with intrinsically interlinked causes of action has not arisen as far as the facts and circumstances of the present cases are concerned. In paragraph-70 of the judgment, cited supra, the Hon'ble Supreme Court unambiguously enumerated that normally, an arbitration takes place between the persons who have, from the outset, been parties to both the arbitration agreement as well as the substantive contract underlining that agreement. The occasional circumstances are narrated by the Supreme Court and in

those circumstances, in the case of **Chloro Controls India (P) Ltd**, cited supra, the Supreme Court arrived a conclusion that there is no absolute obstructions to law/the arbitration agreement. Arbitration and it could be possible between a signatory to an arbitration agreement and a third party. However, the Supreme Court held that heavy onus lies on that party to show that, in fact and in law, it is claiming "through" or "under" the signatory party as contemplated under Section 45 of the 1996 Act. In paragraph-71, the Supreme Court held that the "Group of Companies Doctrine" was mainly extended in the judgment, cited supra, wherein there is a principal agreement and other ancillary agreements which flow from and out of the same transaction and the right also consequently flows between the parties, may not be signatory in the principal agreement. However, those circumstances have not arisen as far as the present cases are concerned. Even in paragraph-72 of the case of **Chloro Controls India (P) Ltd**, cited supra, the Supreme Court held that "intention of the parties" is a very significant feature which must be established before the scope of arbitration can be said to include the signatory as well as the non-signatory parties.

73. In this case, the facts regarding the execution of the

Partnership Deed by the father of the first respondent late Mr.V.G.Panneerdas is not disputed by the first respondent. The reconstitution of Partnership Deeds on various occasions for the last 37 years are also not disputed between the parties, including the first respondent. Under these circumstances, the first respondent has filed a petition before the Arbitrator after a lapse of 37 years from the constitution of the original Partnership Deed by her father late Mr.V.G.Panneerdas. Therefore, the present cases cannot be construed as exceptional. The exceptional circumstances cannot be extended in view of the fact that the present arbitration is a domestic arbitration without reference to Section 45 of the Arbitration Act, 1996 and this apart, the Partnership Deed between the father and sons were established and the same is admitted by the first respondent and there is no right flows from those Partnership Deeds in favour of the first respondent. This being the factum, the judgment of the Supreme Court, cited supra, may not have any application with reference to the facts and the circumstances of the present cases on hand and consequently, the reliance placed by the learned Senior Counsel appearing on behalf of the first appellant deserves no merit consideration.

74. In the case of **Cheran Properties Ltd vs. Kasturi & Sons Ltd [(2018) 16 SCC 413]**, wherein in paragraphs 21, 22, 23, 24 and 25, the Hon'ble Supreme Court of India, held as under:-

"21. Explaining the legal basis that may be applied to bind a non-signatory to an arbitration agreement, this Court in Chloro Controls case [Chloro Controls India (P) Ltd. vs. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] held thus: (SCC p. 694, paras 103.1, 103.2 & 105)

"103.1. The first theory is that of implied consent, third-party beneficiaries, guarantors, assignment and other transfer mechanisms of contractual rights. This theory relies on the discernible intentions of the parties and, to a large extent, on good faith principle. They apply to private as well as public legal entities.

103.2. The second theory includes the legal doctrines of agent-principal relations, apparent authority, piercing of veil (also called "the alter ego"), joint venture relations, succession and estoppel. They do not rely on the parties' intention but rather on the force of the applicable law.

105. We have already discussed that under the group of companies doctrine, an arbitration agreement entered into by a company within a group of companies can bind its non-signatory affiliates, if the circumstances demonstrate that the mutual intention of the parties was to bind both the signatory as well as the non-signatory parties."

22. The position in *Indowind* [*Indowind Energy Ltd. vs. Wescare (India) Ltd.*, (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397] was formulated by a Bench of two Judges before the evolution of law in the three-Judge Bench decision in *ChloroControls* [*Chloro Controls India (P) Ltd. vs. Severn Trent Water Purification Inc.*, (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] . *Indowind* [*Indowind Energy Ltd. vs. Wescare (India) Ltd.*, (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397] arose out of a proceeding under Section 11(6). The decision turns upon a construction of the arbitration agreement as an agreement which binds parties to it. The decision in *Prasad* [*S.N. Prasad vs. Monnet Finance Ltd.*, (2011) 1 SCC 320 : (2011) 1 SCC (Civ) 141] evidently involved a guarantee, where the guarantor who was sought to be impleaded as a party to the

arbitral proceeding was not a party to the loan agreement between the lender and borrower. The loan agreement between the lender and borrower contained an arbitration agreement. The guarantor was not a party to that agreement.

23. As the law has evolved, it has recognised that modern business transactions are often effectuated through multiple layers and agreements. There may be transactions within a group of companies. The circumstances in which they have entered into them may reflect an intention to bind both signatory and non-signatory entities within the same group. In holding a non-signatory bound by an arbitration agreement, the court approaches the matter by attributing to the transactions a meaning consistent with the business sense which was intended to be ascribed to them. Therefore, factors such as the relationship of a non-signatory to a party which is a signatory to the agreement, the commonality of subject-matter and the composite nature of the transaction weigh in the balance. The group of companies doctrine is essentially intended to facilitate the fulfilment of a mutually held intent between the parties,

where the circumstances indicate that the intent was to bind both signatories and non-signatories. The effort is to find the true essence of the business arrangement and to unravel from a layered structure of commercial arrangements, an intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of a signatory.

24. International conventions on arbitration as well as the UNCITRAL Model Law mandate that an arbitration agreement must be in writing. Section 7 of the Arbitration and Conciliation Act, 1996 affirms the same principle. Why does the law postulate that there should be a written agreement to arbitrate? The reason is simple. An agreement to arbitrate excludes the jurisdiction of national courts. Where parties have agreed to resolve their disputes by arbitration, they seek to substitute a private forum for dispute resolution in place of the adjudicatory institutions constituted by the State. According to Redfern and Hunter on International Arbitration, the requirement of an agreement to arbitrate in writing is an elucidation of the principle that the existence of such an agreement should be

clearly established, since its effect is to exclude the authority of national courts to adjudicate upon disputes. [Redfern and Hunter on International Arbitration, 5th Edn. — 2.13, pp. 89-90.]

25. Does the requirement, as in Section 7, that an arbitration agreement be in writing exclude the possibility of binding third parties who may not be signatories to an agreement between two contracting entities? The evolving body of academic literature as well as adjudicatory trends indicate that in certain situations, an arbitration agreement between two or more parties may operate to bind other parties as well. Redfern and Hunter explain the theoretical foundation of this principle:

"... The requirement of a signed agreement in writing, however, does not altogether exclude the possibility of an arbitration agreement concluded in proper form between two or more parties also binding other parties. Third parties to an arbitration agreement have been held to be bound by (or entitled to rely on) such an agreement in a variety of ways: first, by operation of the 'group of companies' doctrine pursuant to which the benefits and duties arising from an arbitration agreement

may in certain circumstances be extended to other members of the same group of companies; and, secondly, by operation of general rules of private law, principally on assignment, agency, and succession.... [Id at p. 99.] "

The group of companies doctrine has been applied to pierce the corporate veil to locate the "true" party in interest, and more significantly, to target the creditworthy member of a group of companies [Op cit fn. 16, 2.40, p. 100.]. Though the extension of this doctrine is met with resistance on the basis of the legal imputation of corporate personality, the application of the doctrine turns on a construction of the arbitration agreement and the circumstances relating to the entry into and performance of the underlying contract. [Id, 2.41 at p. 100.]"

75. In the case of **Transcore vs. Union of India [(2008) 1 SCC 125]**, wherein the Hon'ble Supreme Court, in paragraph-67, held as under:-

"67. The question still remains as to the object behind insertion of the three provisos to Section 19(1) of the DRT Act vide amending Act

30 of 2004. The DRT is a tribunal, it is the creature of the statute, it has no inherent power which exists in the civil courts. Order 23 Rule 1(3) CPC states *inter alia* that where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim then the civil court may, on such terms as it thinks fit, grant the plaintiff permission to withdraw the entire suit or such part of the claim with liberty to institute a fresh suit in respect thereof. Under Order 23 Rule 1(4)(b), in cases where a suit is withdrawn without the permission of the court, the plaintiff shall be precluded from instituting any fresh suit in respect of such subject-matter. Order 23 Rule 2 states that any fresh suit instituted on permission granted shall not exclude limitation and the plaintiff shall be bound by law of limitation as if the first suit had not been instituted. Order 23 Rule 3 deals with compromise of suits. It states that where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise or where the defendant satisfies the plaintiff in respect of whole or any part of the subject-matter of the

suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith.”

76. In paragraph-67 of the judgment, cited supra, the Hon'ble Supreme Court distinguished the facts by holding that the DRT is a Tribunal, it is the creature of the statute, it has no inherent power, which exists in the Civil Courts, then the Supreme Court relied on Order 23, Rule 1 of the Code of Civil Procedure in the matter of institution of fresh suit by the parties.

77. The above proposition of law laid down by the Courts would reveal that the Arbitrator cannot exercise an inherent power conferred to the Civil Courts under the Code of Civil Procedure. The Arbitrator is bound to function within the scope and ambit of the Act and resolve the disputes between the contracted parties to the Arbitration Agreement as defined under the Act. Travelling beyond the scope of the Act is impermissible and if such an exercise is made, then the same would result in exercise of excess jurisdiction and finally the Arbitrator would be functioning as a Civil Court, which is not intended under the provisions of the Arbitration and Conciliation Act, 1996.

When the Arbitrator is appointed under the Statute, scope, powers and jurisdiction shall be within the provisions of the said Statute. The Arbitrator is not empowered to travel beyond the scope of such powers and in the event of such an exercise, the same would cause prejudice to either of the parties to the Arbitration Agreement and this apart, certain common civil rights cannot be decided by the Arbitrator.

78. The sole object of the Arbitration Act is to resolve the disputes as expeditiously as possible with the minimum intervention of the Court of Law. The scope of Alternative Dispute Resolution (ADR) cannot be expanded so as to usurp the inherent powers of Civil Courts. Section 16 cannot be interpreted so as to entertain an application from any person, who is a third party to the Arbitration Agreement for the purpose of arbitral adjudications and competence of the Arbitral Tribunal to Rule of its Jurisdiction would indicate that the Arbitral Tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the Arbitration Agreement and for that purpose, the Tribunal may consider the facts and the terms and conditions of the agreement. Section 16(2) states that "a plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence".

79. In the present appeals, the appellants have raised an objection with regard to the Arbitral Tribunal to implead a third party to the Arbitration Agreement in the adjudicative process, since the first respondent is unconnected with the business transactions which all are being carried on and under the Partnership Deed of the year 1993. Admittedly, the first respondent is not a signatory to the original Partnership Deed or the subsequent reconstituted Partnership Deeds on various occasions. However, the first respondent is claiming right of inheritance through her father late Mr.V.G.Panneerdas and her capacity as a legal heir. The fact remains that Mr.V.G.Panneerdas had not nominated the first respondent as a partner. Contrarily, Mr.V.G.Panneerdas nominated his wife Mrs.Parijatham as partner in the partnership firm after his death and the wife of Mr.V.G.Panneerdas nominated her son as a partner. Subsequently, the Partnership Deeds were reconstituted between the partners on various occasions for the last 37 years, the partners are continuing the business and developing the same. Under these circumstances, the first respondent filed impleading petition in the arbitration proceedings, setting out a claim that she is the legal heir of late Mr.V.G.Panneerdas and she is entitled to inherit the profits from the partnership firm, which was originally constituted by her father.

80. This Court is of the considered opinion that even such a right is traceable in favour of the first respondent, then the only possible course would be to approach the Competent Court of Law and establish her legal right , if any, available based on the documents or the evidences. Civil rights are to be established independently before the Competent Civil Court by the parties. However, such civil rights cannot be adjudicated or enforced by the Arbitrator in the contracted arbitration proceedings under the provisions of the Act. If an Arbitrator is allowed to adjudicate the civil rights of the parties or the rights regarding inheritance of properties, then it would result in submerger of the very Arbitration Agreement.

81. The Arbitrator is a person appointed in order to resolve the dispute between the parties under certain terms and conditions in the Arbitration Agreement. The disputes between the parties are definite and existence of Arbitration Agreement is an essential one, while-so, the Arbitrator cannot invoke the powers contemplated under Order 1, Rule 10 of the Code of Civil Procedure, wherein wide powers are granted, so as to implead a person, which is otherwise unconnected with the partnership or in the Arbitration Agreement. If such a concept of power to impleadment is provided to the Arbitrator,

then the scope of arbitration proceedings will be, not only widened but, the purpose and the object of the Act, would be defeated. Thus, the Arbitrator is empowered to adjudicate the disputes strictly with reference to the Arbitration Agreement and with the consent of the parties to the Arbitration Agreement. Contrary to the contractual agreement between the parties, the Arbitrator cannot exercise any powers so as to implead a third party to the Arbitration Agreement for the purpose of adjudicating the right of any such third party.

82. The first respondent herein admittedly is not a party to the Arbitration Agreement nor a signatory in the Partnership Deed or any dispute relating to the civil rights are subjected to the arbitral adjudication. Admittedly, the first respondent last 37 years has not raised any dispute regarding the reconstitution of Partnership Deeds between the partners. Under these circumstances, the impleading petition is filed in order to participate in the arbitration proceedings to establish the civil rights of the first respondent, relating to the Law of Inheritance. In the event of claiming the legacy of late Mr.V.G.Panneerdas, the first respondent is at liberty to approach the Competent Court of Law and arbitration proceedings are not a Forum for adjudication of such civil rights. Thus, the impleading petition at the

threshold is liable to be rejected as not maintainable for the simple reason that the first respondent is neither a partner or the right flows from and out of the Partnership Deed, enabling this Court to consider her case as an exceptional one.

83. However, the Arbitrator usurped the wide powers conferred under Order 1, Rule 10 of the Code of Civil Procedure and impleaded the first respondent for the purpose of adjudicating the disputes aroused through an Arbitration Agreement. It violates the very contractual obligation between the Arbitrator as well as the parties to the Arbitration Agreement under the provisions of the Arbitration and Conciliation Act, 1996. The Arbitrator in the event of exercising such wide powers under the Code of Civil Procedure, the same would infringe the rights of other parties, which cannot be adjudicated in the arbitration proceedings.

84. Even after impleadment, the possible disputes to be raised by the first respondent in the arbitration proceedings are that she is the legal heir of late Mr.V.G.Panneerdas and therefore, she is entitled to be a partner in the partnership firm in her capacity as a legal heir. This Court is doubtful, whether such a dispute affecting the

rights of all other legal heirs shall be adjudicated by the Arbitrator in the arbitration proceedings. Considering the scope of the arbitration proceedings and taking note of the rights of the legal heirs of late Mr.V.G.Panneerdas and the terms and conditions of the Partnership Deed as well as the disputes raised under the Arbitration Act, it is highly improper on the part of the learned Arbitrator to adjudicate the civil rights of the parties under the General Laws. In such an event, the Arbitrator would be travelling beyond the scope of the Arbitration Act and such a power is not vested with an Arbitrator under the provisions of the Arbitration Act, 1996.

85. Therefore, the civil rights of the parties are to be established before the Competent Court of Law. The disputes raised under the Arbitration Act alone can be adjudicated by the Arbitrator by exercising the powers conferred under the Act. The Arbitrator cannot be equated with the Court of Law and this proposition is well settled as the Arbitrator is a creator of the Statute and has no inherent power, which exists in the Civil Court and the Arbitrator cannot exercise the inherent power and has to exercise the powers strictly within the ambit of the Arbitration Act and certainly not beyond the scope of the arbitration proceedings.

86. Undoubtedly, It is fundamental that a provision for arbitration to constitute an Arbitration Agreement for the purpose of Section 7 should satisfy two conditions, namely, (i) it should be between the parties to the dispute; and (ii) it should relate to or be applicable to the dispute. Therefore, what remains to be seen is whether there is any document signed by the parties as provided in Clause (a) of sub-section (4) of Section 7. If no such signed documents between the parties are available, then it cannot be construed as an Arbitration Agreement within the meaning of Section 7 of the Act.

87. In the present cases, the first respondent is not a signatory to the documents, namely, the Partnership Deed. The dispute was originally raised between the appellants and the respondents 2 to 6. An application was filed before the High Court under Section 11 of the Arbitration Act, 1996, the High Court appointed an Arbitrator to adjudicate and resolve the disputes. Before the Arbitrator, the first respondent has filed an application for impleadment and she could not able to establish that she is the signatory to the document or partner in the partnership firm. In the absence of establishing that the first respondent is either a partner or

signatory, then the Arbitrator has no power to entertain the impleading petition under the provisions of the Arbitration Act.

88. With reference to the findings of the Arbitrator in his order dated 02.11.2019, the first point considered by the Arbitrator is whether the application filed seeking for applicant's rights as a legal representative of her parents, who died on 07.05.1987 and 25.08.1993 was barred by limitation.

89. The second point taken was that all three partnerships owned their origin to the partnership of the year 1982, where her father had been a partner and since he nominated his wife to continue the partnership on his death, the applicant's mother was a partner and on her death her son had been nominated as such to become a partner and contrary to the earlier terms three separate partnership were made. However, the nominee only represented the legal heirs as a Trustee and the applicant as a legal heir to her parents must be taken to be represented in the estate of the deceased and their corresponding interest in the partnerships.

90. The third point taken into consideration by the

Arbitrator is that the applicant is not shown as a partner in any of the three partnership firms brought about subsequent to the death of Mrs.Parijatham. The question to be seen therefore is, whether there was any Arbitral Agreement that availed in her favour to join the proceedings.

91. While answering the above three issues raised by the Arbitrator for the purpose of deciding the impleadment petition, regarding the first issue, the Arbitrator arrived a conclusion that "I will not find the plea of limitation could be encountered without calling for evidence and proof of manifest and hostile conduct of ouster that will have to await till a later point of time, and I hold accordingly".

92. With reference to the second issue, the Arbitrator concluded that "the nature of holding by respondents 1 to 4 itself cannot be seen prima facie as in exclusion as I observed in previous paragraph and a fortiori, the same logic would apply for retaining such a consideration at a future point of time and not conclude it. I will hold the second point accordingly".

93. As far as the third issue is concerned, the Arbitrator

held as "that can surely await a due consideration when rights of all parties are decided finally when the issue of dissolution or otherwise of the partnerships are undertaken through arbitral adjudication".

94. In paragraph-16 of the order, the Arbitrator made a finding that "I reiterate that they are merely for the purpose of considering whether the applicant could be brought on Board or could be pitch-forked at the threshold. None of my observations can ever come in the way the respondents to argue that the legal provision that I have applied have no relevance or applicability at the conclusion of the proceedings, when the rights of parties are considered".

95. In paragraph-17, the findings made are that "impleadment of party must be of a person who has a semblance of right and not established right or admitted right in previous proceedings between the parties".

96. In paragraph-18, the Arbitrator arrived a conclusion that "we will literally be deciding all the relevant questions on whether the partnerships must be dissolved or allowed to continue and the mutual rights and obligations of partners. Who are entitled and who

are not are also relevant. As a more generic issue, the impleadment of party **provisions contained in the Code of Civil Procedure through order 1, Rule 10 gives a wide power to a Court and in our context, the same must apply to an Arbitral Tribunal**".

97. Finally, the Arbitrator arrived a conclusion that "I shall therefore see the impleadment of the applicant will help to secure a comprehensive adjudication of the extent to which the heirs of the parents who were partners during the respective lifetime could claim a right or not".

98. In paragraph-19, the Arbitrator held that "I allow the application and order the impleadment in claim statements 1 to 4. Rajesh has filed claim statements which is numbered as 5, 6 and 7/2019. Since the claim statement has come out subsequently I direct the suo moto impleadment of the applicant in the above petitions also".

WEB COPY

99. The spirit of the order passed by the Arbitrator with reference to the Arbitration Act is to be considered by this Court. The above findings would reveal that the Arbitrator has made an initiation

to decide the legal rights of the parties, including the rights of the first respondent. The Arbitrator in express terms held that the impleadment of party, provisions contained in the Code of Civil Procedure through Order 1, Rule 10 gives a wide power to a Court and in our context, the same must apply to an Arbitral Tribunal. Such a conclusion arrived by the Arbitral Tribunal is undoubtedly an exercise of inherent power, which is impermissible in law. The power which is not contemplated under the Arbitration Act, cannot be exercised by the Arbitral Tribunal. The power being statutory in character, the inherent power is not vested. While-so, the Arbitrator cannot invoke the provisions of the Code of Civil Procedure for the purpose of impleading a third person into the arbitral proceedings and he is bound to be strict with reference to the contracted Arbitration Agreement as well as the parties to the Arbitration Agreement and the adjudication must be within the parameters of the disputes raised between the parties to the Arbitration Agreement. सत्यमेव जयते

100. The decision of the Hon'ble Supreme Court of India in the case of **Chloro Controls India (P) Ltd**, cited supra, has got a restricted implication, as in the opening paragraph itself, the Apex Court, clarified the scope of widening of arbitral proceedings. The

Supreme court in unambiguous terms held that a third party cannot be impleaded as a party to the arbitral proceedings. Only on exceptional circumstances, where there is multiple, multi-party agreements with intrinsically interlinked causes of action, more so, where performance of ancillary agreements is substantially dependent upon effective execution of the principal agreement. Thus, there must be a link between the Principal Arbitration Agreement and an ancillary agreement if any. The circumstances mostly would arise in business transactions between the Multinational Companies in international arbitration proceedings under Section 45 of the Arbitration act. Thus, such exceptional circumstances is a rare occasion as far as the domestic Arbitration Agreements are concerned. But however, the parties, who are filing such an application must establish such intrinsically interlinked causes of action for the purpose of participating in the arbitral adjudication.

101. There is no express provision available for impleadment of a third party in the Arbitration Act. Even there is no implied provision, which is traceable under the Act. In the absence of any provision when the Arbitrator is impleading a person for an effective adjudication of the disputes under the Arbitration Act, then

the principles laid down by the Supreme Court in the case of **Chloro Controls India (P) Ltd**, cited supra, is to be followed.

102. In the order impugned, the Arbitrator arrived a conclusion that the impleadment of the first respondent will help to secure a comprehensive adjudication of the extent to which the heirs of the parents, who were partners during the respective lifetime could claim right or not. Such a broad exercise of power invoked by the Arbitrator for the purpose of determining the civil rights of a person is beyond the scope of the provisions of the Arbitration Act. If the Arbitrator is appointed under the Arbitration Act is allowed to decide the civil rights of a person, who is otherwise not a party to the Arbitration Agreement, then the Arbitrator would be exercising the inherent power conferred to the Civil Court, which is not contemplated.

103. The findings arrived in paragraphs 16 and 17 of the order impugned also reveal that the Arbitrator has decided to undertake the process of complete adjudication regarding the family dispute of Mr.V.G.Panneerdas and his heirs. Such an exercise of deciding the rights of legal heirs of Mr.V.G.Panneerdas in the arbitration proceedings, wherein admittedly the partners are the

appellants as well as the respondents 2 to 6 cannot be done at all. Deciding the rights of the legal heirs of Mr.V.G.Panneerdas is a civil dispute and the aggrieved parties are entitled to approach the Competent Civil Court of Law.

104. In a contracted arbitration, the Arbitrator cannot travel beyond the scope of the disputes raised between the parties and attempt to decide the civil rights of the other legal heirs or the persons, who all are not signatories to the Arbitration Agreement. In this case, the question of intrinsically interlinked causes of action does not arise as there is no ancillary Arbitration Agreement to the Principal Arbitration Agreement, which is admittedly between the appellants and the respondents 2 to 6. Thus, invoking Section 45 would not arise and the rights of all the legal heirs of late Mr.V.G.Panneerdas is a pure civil dispute and mixed question of facts and law, which cannot be adjudicated by the Arbitrator under the provisions of the Arbitration Act. Thus, such civil disputes cannot be entertained or adjudicated by the Arbitrator, who is otherwise empowered to decide the disputes between the parties to the Arbitration Agreement strictly within the ambit of the provisions of the Arbitration Act.

105. The Arbitrator while considering the grounds raised by the appellants that the first respondent has to workout her remedies for her establishing her right under her parents by an independent suit and not through Arbitral Tribunal. The Arbitral Tribunal arrived a conclusion that world over, there have been growing awareness to strengthen Alternative Dispute Resolution (ADR) processes and arbitration practice is a robust exercise in that direction. However, such Alternative Dispute Resolution processes would not confer any power to the Arbitrator to decide the civil rights of a third person, who is not a party to the Arbitration Agreement. Alternative Dispute Resolution mechanism would not provide any competency to exercise the inherent power conferred to the competent Civil Court of Law. The Alternative Dispute Resolution processes with reference to the Statute is to be exercised within the ambit of the provisions and not to decide the civil rights of the citizen. In such an event, we are converting the Alternative Dispute Resolution System as the Court of Law and such a practice would be dangerous as the Arbitrators are appointed based on contract basis and by consent of the parties and the remuneration to the Arbitrator is also paid by the parties to the Arbitration Agreement. When the Arbitrators are receiving their remuneration from the parties to the Arbitration Agreement, which is

contractual in nature, they are bound to act as a neutral person between the parties to the agreement and resolve the disputes raised between those parties. In the event of allowing the Arbitrator to exercise the powers beyond the scope of the Arbitration Act, then the Arbitrator would be exercising the inherent powers of the Court, so as to grant the relief to a person, who is not a party to the Arbitration Agreement and the very nature of the arbitration proceedings do not permit such a situation.

106. Taking a simple example, where two parties entered into an agreement and there is a dispute arose and the two parties have agreed to place the dispute before a neutral person and pay remuneration to him and the said neutral person adjudicate the disputes between those two parties and resolve the same in accordance with certain procedures. In such a scenario, if such a neutral person is allowed to exercise the power to decide the civil rights of other legal heirs or persons, who all are not party to the Arbitration Agreement, then he would be exercising the powers of the Civil Court, which is not only impermissible but an infringement into the constitutional structure of Judicial System, as well as the principles laid down in the Constitution.

107. The findings of the Arbitrator that the first respondent has established a semblance of right, which is sufficient for impleading the first respondent in the arbitral adjudication. This Court is of the considered opinion that this itself amounts to expanding the scope of the arbitration proceedings. A semblance of right referred by the Arbitrator is relatable to the civil right of the first respondent regarding her right of inheritance from her father late Mr.V.G.Panneerdas.

108. "The Doctrine of No-Prejudice" cannot have any application with reference to the impleadment of a person in a dispute under the Arbitration Agreement within the ambit and provisions of the Arbitration Act, 1996. The impact of the application of the said Doctrine, would result in exercise of inherent powers of the Court of Law. Thus, the rights of a third person to an Arbitration Agreement cannot be adjudicated during the further or final hearing of the arbitral proceedings.

109. In view of the facts, circumstances and the discussions elaborately made in the aforementioned paragraphs, this Court has no hesitation in arriving a conclusion that the Arbitrator has exercised excess jurisdiction beyond the scope of the provisions of the

Arbitration Act as well as beyond the scope of the contracted arbitral proceedings and consequently, the orders dated 02.11.2019 passed by the Arbitrator M.A.Nos.4 of 2019 in Arbitration Claim No.1 of 2019, 4 of 2019 in Arbitration Claim No.3 of 2019, 4 of 2019 in Arbitration Claim No.2 of 2019 and 4 of 2019 in Arbitration Claim No.4 of 2019 are quashed. Consequently, C.M.A.Nos.4465, 4467 to 4469 of 2019 stands allowed. However, there shall be no order as to costs. The connected miscellaneous petitions are closed.

24-02-2020

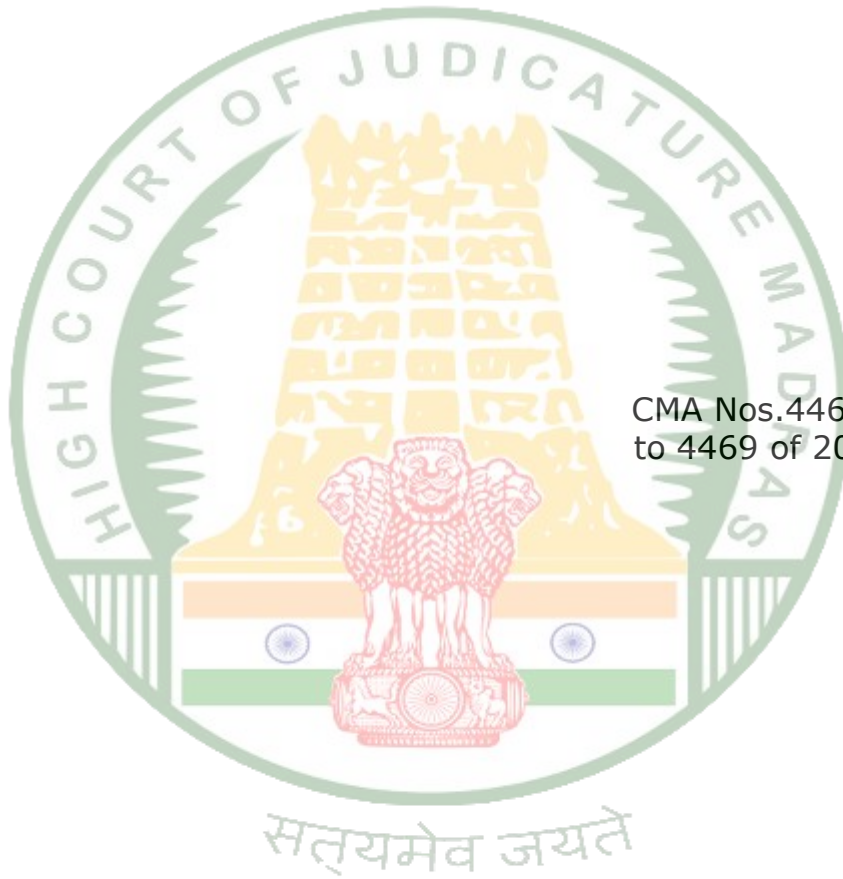
Index : Yes/No.
Internet: Yes/No.
Speaking Order/Non-Speaking Order
Svn



WEB COPY

S.M.SUBRAMANIAM, J.

Svn



CMA Nos.4465, 4467
to 4469 of 2019

WEB COPY

24-02-2020