

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.530 of 2020

1.M/s.S.Lakshmi Agencies,
a registered Partnership Firm
rep.by its Partner T. Anbuezhian,
No.4, Maraimalai Adigal Salai,
Puducherry – 605 001.

2.T.Anbuezhian

...Petitioners

C.U.Seethalakshimi

...Respondent

Prayer: Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 praying to appoint a sole Arbitrator to adjudicate the claims of the respondent alleged to have resigned from the Partnership Firm and also to resolve the problems created by the respondent in stopping the day-to-day activities of the 1st petitioner's Partnership Firm under the Act.

For Petitioners : Mr.N. Santhosh Nagarajan

For Respondent : Served – No appearance

ORDER

This petition is filed for appointment of an Arbitrator invoking Clause 13 of the Partnership Deed dated 03.10.2011 entered into between the petitioners and the respondent.

2.The 1st petitioner which is the Partnership Firm is engaged in the business of selling retail petroleum and allied products as an authorised agent of Indian Oil Corporation Limited. The 2nd petitioner and the respondent are the partners of the 1st petitioner Firm. The 1st petitioner Firm which was maintaining an account with the Indian Overseas Bank, Orleanpet Branch, Puducherry, suddenly received a Letter dated 04.06.2019 informing the petitioners that the Bank was freezing the 1st petitioner's account in response to a letter of the respondent stating that she intend to resign from the 1st

petitioner Firm. The Bank therefore directed the petitioners to repay the entire Over Draft dues to the tune of Rs.1.5crores. This was the starting of the dispute between the petitioners and the respondent.

3.The petitioners would submit that the petrol bunk was originally run as the Partnership Firm by the respondent's husband. Since he had incurred huge debt he had approached the 2nd respondent who is related to him to solve the financial crisis and promised that he would ultimately handover the Dealership to the 2nd petitioner and as the first step inducted him and his wife as Partners in the 1st petitioner Firm. The 2nd petitioner had pumped in inconsiderable sums of money into the Partnership Firm. The Partnership Firm was constituted for a fixed period of 15 years and it was agreed that the respondent and her husband would induct the 2nd petitioner's wife as Partner and thereafter, the respondent would retire from the Partnership Firm. The property on which the bunk was running was agreed to be transferred to the 2nd petitioner. The

petitioner would submit that after the end of the 5th year in the month of July 2018, the 2nd petitioner and his family members were repeatedly requesting the respondent's husband to fulfill the terms of the Agreement of inducting him the 2nd petitioner as his Partner and the retirement of the respondent from the 1st petitioner's firm and the transfer of Firm in favour of the 2nd petitioner. However, these issues were addressed by the respondent since the respondent was acting against the interest of the Firm, a Legal Notice dated 14.11.2019 was issued to the respondent calling upon her to refrain from interfering with the day-to-day activities of the Firm and also to submit the dispute to the Arbitrator.

4.The petitioners were also constrained to move an application under Section 9 of the Act before the Principal District Court, Puducherry, against the respondent, restraining them from making claims to the Indian Oil Corporation on the Bunk. An *ex parte* interim order was also granted and the same is pending before the

Court. Since the respondent vide his letter dated 02.12.2019 had rejected the nominee of the petitioner the petitioners have come forward with the above application.

5.Despite being served with the copy of the petition on 17.12.2020, the respondent has not entered appearance either in person or through their pleader. The private notice issued by the learned counsel for the petitioners has also been served on the respondent. Therefore, this Court has proceeded to set the respondent *ex parte* and pass orders on the application.

6.From the averments contained in this petition, it is evident that a dispute has arisen between the parties and Clause 13 of the Partnership Deed dated 03.10.2011 deals with the dispute resolution and the same is extracted hereunder:

*“13.Any dispute or difference which may arise
between the partner or their legal representatives with*

regard to the construction, meaning or effect of this deed or any part thereof, or respecting the accounts, profits and losses of the business or the rights and liabilities of the partnership under this deed or dissolution or winding up of the business or any matter relating to the firm shall be referred to arbitration and provisions of the Arbitration Act 1940 shall apply thereto.”

It would show that the parties have agreed to resolve the disputes and differences through the arbitration.

7. Accordingly, it is ordered as follows:

(i) Thiru.D.Ramabathiran, District Judge (Rtd), Puducherry, Contact No.9443331869, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes inter se the parties.

ii) The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of

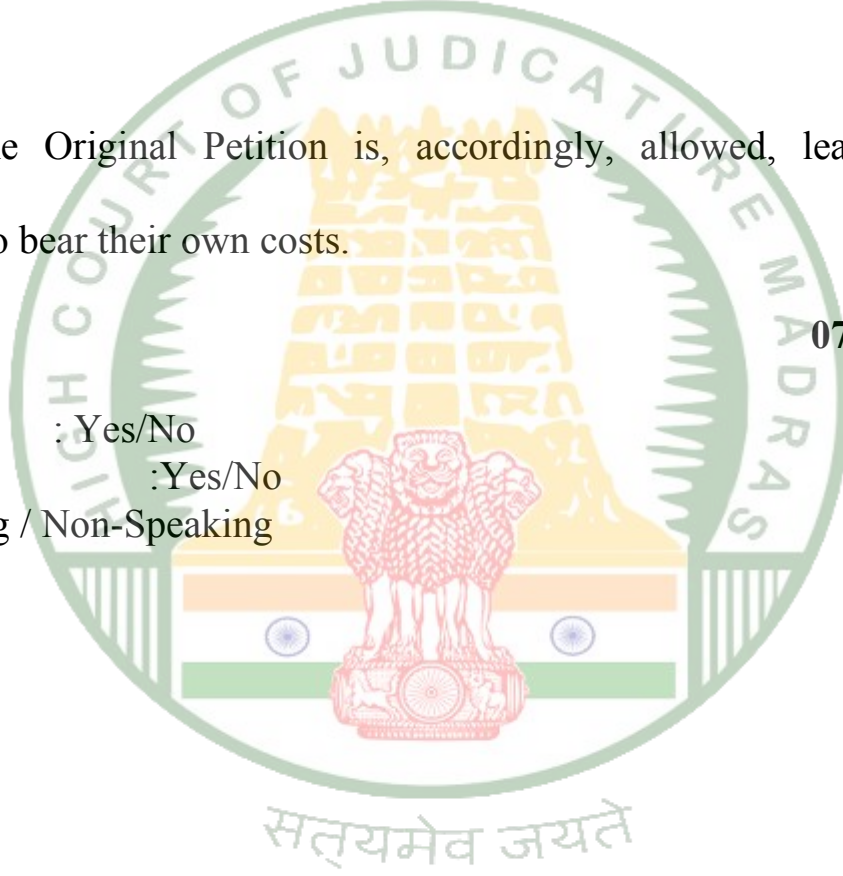
the order. It is open to the respondent to raise all legal objections as to the validity of contract.

iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per law.

The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

07.01.2021

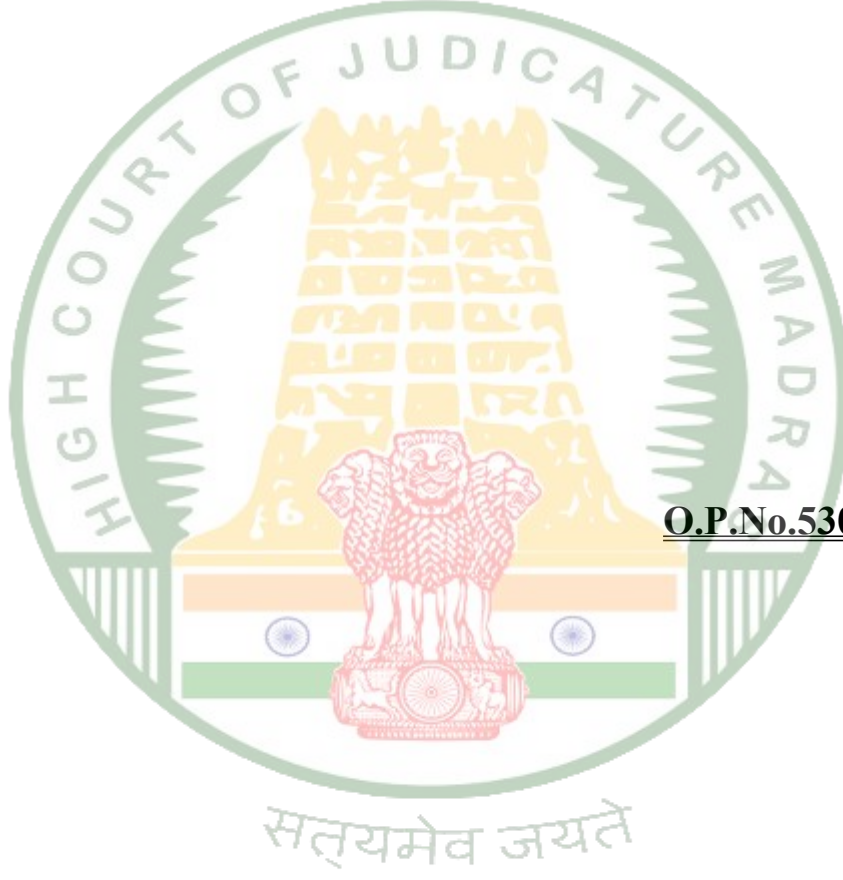
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