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Arb O.P.(Com. Div.) No.198 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2022

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THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

Arb O.P.(Com. Div.) No.198 of 2022

Mr.M.Gunasekaran @ Kumar

... Petitioner

Vs.

1.Mr.K.Perumal

2.Sri Baktha Krishna Bricks

Partnership Firm

Represented by K.Perumal

No.18, Perumal Agaram

Thiruverkadu Post

Thiruverkadu

Chennai – 600 077.

Respondents

...

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, as amended by the Arbitration and Conciliation Amendment Act, 2019, praying to pass a order appointing an arbitrator to decide the disputes and claims emerged between the petitioner and the respondents as per the partnership deed dt. 01.03.1997 in accordance with law on merits.



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For Petitioner : Mr.R.Natarajan
For Respondents : Mr.M.V.Seshachari [R1]
R2 - Served

ORDER

Captioned Arb.OP has been presented in this Court on 31.03.2022 with a prayer for appointment of a sole arbitrator under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity]. Captioned Arb.OP is predicated on Clause 21 of a partnership deed dated 01.03.1997, which reads as follows :

' 21. Any difference of opinion between the partners shall be referred to as Arbitrator appointed by the partners and the decision of the Arbitrator shall be final.'

2. Aforementioned 'partnership deed dated 01.03.1997' shall hereinafter be referred to as 'primary contract' for the sake of convenience and clarity.

3. Clause 21 of the aforementioned primary contract serves as an



arbitration agreement between the petitioner and respondents i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.

4. In and by primary contract, a partnership firm in the name and style of 'M/s.SRI BAKTHA KRISHNAA BRICK FIELD' (hereinafter 'said Firm' for the sake of convenience and clarity) was constituted by three individuals namely petitioner, first respondent in Captioned Arb.OP and their mother Smt.K.Suseela Ammal (W/o.Mr.G.B.Krishnasamy Naidu). There is no dispute that Smt.K.Suseela Ammal is no more and her date of demise is 09.04.2019.

5. There is no dispute or disagreement before this Court about the existence of arbitration agreement i.e., Clause 21 of the primary contract. However, learned counsel for first respondent adverting to the counter affidavit of first respondent, submits that in and by a registered sale deed dated 21.08.1998, second respondent-Partnership Firm was wound up and no business activities whatsoever was carried on by the second respondent qua this partnership firm. Be that as it may, learned counsel for first



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respondent very fairly submits that primary contract is subsisting and the said Firm constituted by primary contract has not been dissolved.

6. Learned counsel also submits that after purchase of property as aforementioned, petitioner along with another brother Mr.K.Venkatesh constituted another Partnership Firm in the name and style of 'SRI BHAKTHAA KRISHNA BRICK FIELD' (hereinafter 'said another Firm' for the sake of convenience and clarity). It may not be necessary to dilate further on these aspects of the matter as the primary contract and the existence of arbitration agreement are not disputed. The question if at all and if that be so, that was attempted to be canvassed is that *lis* is barred by limitation. This will not fall in the deadwood category and it will be a mixed question of facts and law, which would be decided by learned Arbitrator. As the learned counsel for petitioner submits that the averment that *lis* is barred by limitation is incorrect and the claim is alive, as the same would be evident from the reply notice dated 11.03.2021 issued by first respondent.

7. In this regard, it has to be noted that the said Firm has been arrayed as second respondent; that it was duly served with Court notice and private



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notice but there is no representation. This Court is informed that no counsel has entered appearance for second respondent. A Partnership Firm is not an independent entity, it is only a compendious name for the partners. Therefore, the question as to whether the Partnership Firm can be arrayed as a party in matters of this nature and the question as to the difference in names qua 'said Firm' and 'said another Firm' are left open to be decided by Hon'ble Arbitrator. This Court adopts this procedure owing to the peculiar facts and circumstances of the case on hand and more particularly, owing to the *lis* being amongst the siblings. This Court reminds itself that a Section 11 legal drill should perambulate within the statutory perimeter of sub-section (6A) of Section 11 of A and C Act. In other words, in a Section 11 legal drill, this Court would confine itself to examination of existence of arbitration agreement. Therefore, leaving open all questions, this Court appoints Hon'ble Mr. Justice V.Bharathidasan (Retd.), Former Judge of this Court, residing at No.42 (NB) Greenways Road, Chennai - 600 028, Mob: 94443 83139 and 94455 00224, E-mail: dasanvb@gmail.com as Sole Arbitrator. Hon'ble Sole Arbitrator is requested to enter upon reference, adjudicate upon the arbitral disputes that have arisen between the parties qua primary contract i.e., partnership deed dated 01.03.1997 by holding sittings in 'Madras High



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Court Arbitration Centre under the aegis of this Court' ['MHCAC'], in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and learned Arbitrator's fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

Captioned Arb.OP disposed of in aforesaid manner. There shall be no order as to costs.

13.06.2022

Index : Yes / No

Interners : Yes / No

Speaking order / Non-speaking order

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Note: Registry is directed to communicate a copy of this order forthwith to

1. The Hon'ble Mr. Justice V.Bharathidasan (Retd.)

Former Judge of this Court

No.42 (NB) Greenways Road,

Chennai - 600 028.

Mobile Nos: 94443 83139 & 94455 00224

E-mail: dasanvb@gmail.com

2. The Director,

Tamil Nadu Mediation and Conciliation Centre -cum-

Ex-Officio Member,

Madras High Court Arbitration Centre,

Madras High Court,

Chennai 600 104.



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M.SUNDAR. J.,

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