



OA.No.523 of 2022

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M.SUNDAR J

Captioned application has been filed in this Court on 18.08.2022 under Section 9 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity, convenience and clarity]. Mr.S.Mahimai Raj, learned counsel on record for the applicant along with Mr.Renton is before this Court. Mr.V.Prakash, learned Senior Advocate instructed by Mr.M.A.Sharun, learned counsel who has lodged a caveat on behalf of all the five respondents is also before this Court.

2. In the case on hand, there shall be constitution of Arbitral Tribunal and captioned application will now go before the Arbitral Tribunal as an application under Section 17 of A and C Act by consent of both sides. Therefore, this Court refrains itself from expressing any view or opinion in the captioned matter. It will suffice to say that the captioned application is predicated on an arbitration clause [Clause 18] of a Deed of Partnership dated 01.04.2020. This 'Deed of Partnership dated 01.04.2020' to which the lone applicant and the five respondents are contracting parties shall be referred to as 'primary contract' for the sake of convenience and clarity. Clause 18 of



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primary contract reads as follows:

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'Clause 18

"If any dispute arises between the Partners, it shall be settled by the negotiation and conciliation proceedings and on the failure of such proceedings, it shall be referred to the Arbitration in accordance with the Arbitration and Conciliation Act, 1996. Each of the parties to the disputes shall be entitled to nominate the Arbitrator and the Arbitrator so nominated shall appoint a presiding Arbitrator. The venue of the Arbitration will be at Chennai only".

3. Aforementioned clause serves as arbitration agreement between the parties i.e., arbitration agreement within the meaning of Section 2 (1) (b) read with Section 7 of A and C Act.

4. In the light of the trajectory which the matter is now taking [as alluded to supra] it will suffice to say that both sides have filed a Joint Memo dated 29.08.2022 along with a communication dated 23.08.2022 from the respondents to the applicant, a scanned reproduction of which [along with docket] is as follows:



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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)
(Commercial Division)

O.A.No.523 of 2022

In the matter of Arbitration and
Conciliation Act, 1996 and

In the matter of Arbitration
Agreement vide Deed of
Partnership dated 01.04.2020
between the Applicant and the
Respondents 1 to 5

P.Ranganatha Reddy,
Son of Late P.R.Narayanasaamy Reddy

...Applicant

Vs:

1. R.Prem Kumar
Son of Mr. V.Rengasamy
& 4 Others

...Respondents

JOINT MEMO FILED ON BEHALF OF THE APPLICANT AND RESPONDENTS

The Applicant and Respondents submit as follows:

1. It is submitted that the above application came up for hearing before this Hon'ble Court today i.e., on 29.08.2022 and during the course of arguments, it is emerged that as both the parties have nominated their respective Hon'ble Arbitrator, a Joint Memo could be filed by the parties expressing consent for this Hon'ble Court appointing Presiding Arbitrator of the Arbitral Tribunal.
2. The Applicant has nominated through Sur-Rescind dated 05.08.2022 Mr.Justice N.Kirubakaran, a retired Judge of the High Court of Judicature at Madras. Whereas the Respondents have nominated through their letter dated 23.08.2022 Mr.Justice M.Sathyanarayana a retired Judge of the High Court of Judicature at Madras as their arbitrator, a copy of which is annexed herewith. The said letter was received by Mr.Justice N.Kirubakaran on 26.08.2022 at 2.30 p.m. Both the arbitrators are yet to appoint the Presiding Arbitrator in accordance with section 11(4)(b) of the Arbitration and Conciliation Act, 1996.
3. In view of the above, the parties herein have no objection for appointing the Presiding Arbitrator by this Hon'ble Court.

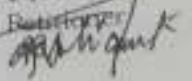


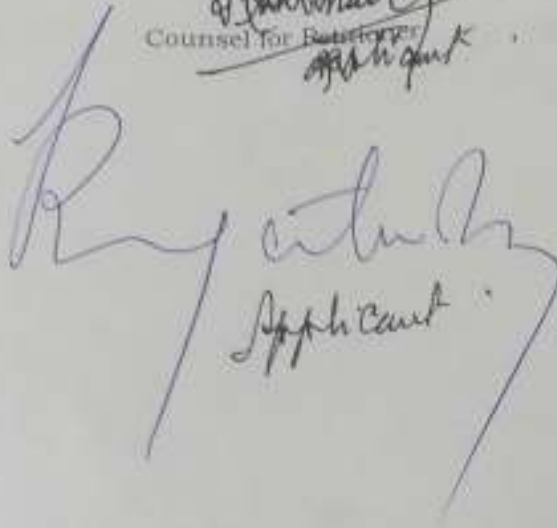
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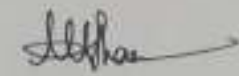
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It is therefore submitted that this Hon'ble Court may be pleased to take this memo on record and pass suitable orders and thus render justice.

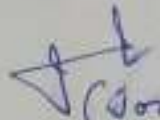
Dated at Chennai on this the 29th day of August 2022.

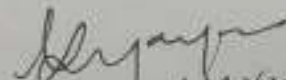

Counsel for Petitioner


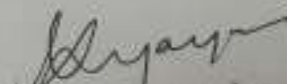

Applicant

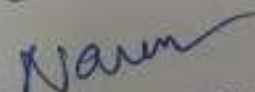

Counsel for Respondents

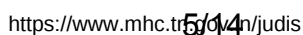
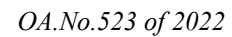

R. Premkumar


(Sonu Sonu)


(M. Vignesh)


for C. Mohan


(M. NARENDHAN)

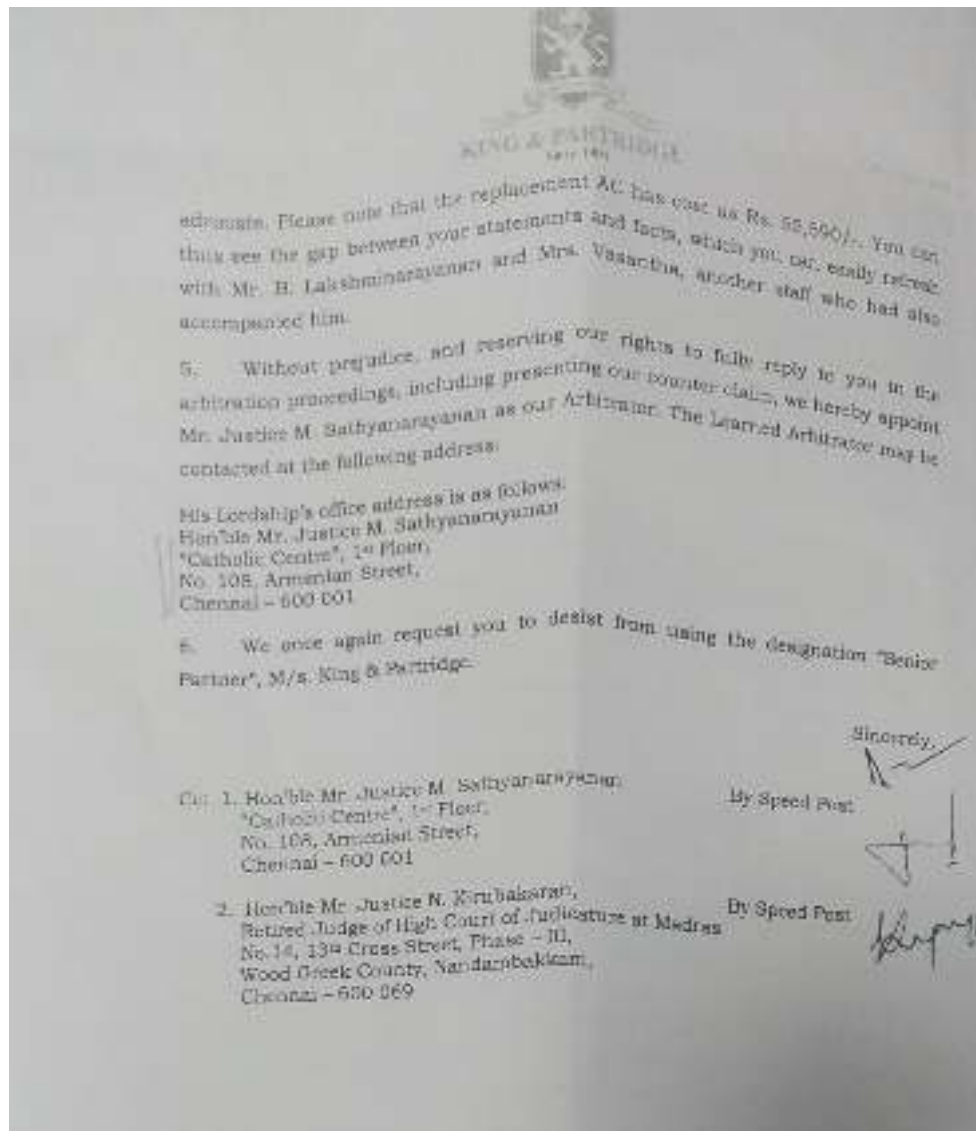




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IN THE HIGH COURT OF
JUDICATURE AT MADRAS
(Ordinary Original Civil
Jurisdiction)

O.A. No. 523 of 2022

REPLY NOTICE DATED
23.08.2022

M.A. SHARUN
RITHVIK
ADVOCATES
ADVOCATES FOR CAVEATOR



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Sign In Register

Track Consignment

Consignment Number: ET168531659IN

Track More

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Confirmed On
High Court Building S.O. Chennai	23/05/2022 18:14:29	600068	29.50	India Speed Post	Kunnathur SO Kandipuram	25/06/2022 14:31:56

Consignment Details For : ET168531659IN

Current Status : Item Delivery Confirmed

Date	Time	Office	Event
20/06/2022	14:31:56	Nandambakkam Kudyiruppu S.O.	Item Delivery Confirmed
20/06/2022	10:06:50	Nandambakkam Kudyiruppu S.O.	Out for Delivery
20/06/2022	08:27:14	Nandambakkam Kudyiruppu S.O.	Item Received
20/06/2022	06:33:45	Chennai NSH	Item Dispatched
20/06/2022	06:02:57	Chennai NSH	Item Bagged
20/06/2022	00:59:21	Chennai NSH	Item Received
20/06/2022	15:49:24	Kunnathur SO Kandipuram	Item Dispatched
20/06/2022	15:47:46	Kunnathur SO Kandipuram	Item Bagged
20/06/2022	12:05:43	Kunnathur SO Kandipuram	Item Redirected to Nandambakkam Kudyiruppu S.O. INSUFFICIENT ADDRESS
20/06/2022	08:19:37	Kunnathur SO Kandipuram	Item Received
20/06/2022	05:48:40	Chennai NSH	Item Dispatched
20/06/2022	13:57:35	Chennai NSH	Item Bagged
20/06/2022	07:44:34	Chennai NSH	Item Received
20/06/2022	06:55:28	Chennai NSH	Item Bagged
20/06/2022	06:10:19	Chennai NSH	Item Received
20/06/2022	19:30:29	High Court Building S.O. Chennai	Item Dispatched

www.tracker.gov.in/jsp/track/trackconsignment.jspx



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23/08/2022 18:51:30 High Court Building S.O (Chennai) [Print Page]

23/08/2022 18:14:25 High Court Building S.O (Chennai) [Print Page]

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IN THE HIGH COURT OF
JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL
JURISDICTION)
(Commercial Division)
O.A.No.523 of 2022

JOINT MEMO FILED ON
BEHALF OF THE APPLICANT
AND RESPONDENTS



M.A.SHARUN & RITHVIK
ADVOCATES FOR CAVEATOR



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5. Learned counsel on both sides, on instructions reiterate the contents of aforesaid Joint Memo. In addition to this, both sides agree that a copy of captioned application i.e., application with interlocutory prayer shall now be presented before Arbitral Tribunal and Hon'ble Tribunal shall deal with the same as an application under Section 17 of A and C Act on its own merits and in accordance with law. This is the reason why this Court is not expressing any view or opinion on the merits of the matter (as already alluded to supra).

6. Reverting to the Joint Memo, Arbitral Tribunal is a creature of contract and it is not a creature of Statute. Therefore, it is open to the contracting parties to amend the agreed procedure. In the case on hand, advertent to Clause 18, i.e., arbitration Clause it is submitted by both sides that though arbitration clause talks about the two Arbitrators nominated by either side appointing a presiding Arbitrator, the Presiding Arbitrator may please be appointed by this Court at its discretion. As Arbitral Tribunal is a creature of contract, this common submission is accepted and this Court proceeds to appoint a Presiding Arbitrator. Hon'ble Mr.Justice N.Paul Vasantha Kumar (Retd.), former Chief Justice, High Court of Jammu and Kashmir, residing at 24-A, 2nd Street, Kamaraj Avenue, Adyar, Chennai-600 020, Mobile: 94443 90958, email:justicenpv@gmail.com, shall now be the



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Presiding Arbitrator.

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7. The above means that the Arbitral Tribunal will now stand constituted by

(i) Hon'ble Mr. Justice N. Paul Vasantha Kumar (Retd.),
former Hon'ble Chief Justice of High Court of Jammu and Kashmir,
24-A, 2nd Street, Kamaraj Avenue, Adyar, Chennai-600 020,
Mobile: 94443 90958,
email: justicenpv@gmail.com ... Presiding Arbitrator

(ii) Hon'ble Mr. Justice M. Sathyanarayanan (Retd.),
former Hon'ble Judge of Madras High Court,
"Catholic Centre", 1st Floor, No. 108,
Armenian Street, Chennai-600 001. ... Arbitrator

(iii) Hon'ble Mr. Justice N. Kirubakaran (Retd.),
former Hon'ble Judge of Madras High Court,
No. 36, 2nd Cross Street, Rayala Nagar,
Ramapuram, Chennai-600 089,
Mobile: 9445025454 ... Arbitrator

8. A copy of captioned application i.e., O.A.No.523 of 2022 shall be presented before Hon'ble Arbitral Tribunal by the applicant and as already delineated supra, Hon'ble Arbitral Tribunal is requested to take up the same and deal with the same on its own merits and in accordance with law by treating it as an application under Section 17 of A and C Act.

9. To be noted, the above is a consent order and that is the reason why



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this Court has appointed presiding Arbitrator more so in a Section 9 application. To be noted, this is in the light of Joint Memo alluded to supra.

It is also made clear that the consent is restricted to (a) appointment of Presiding Arbitrator by this Court and (b) captioned application being heard out as an interim application under Section 17 by the Arbitral Tribunal. In all other aspects, all questions are left open qua both parties to be decided by Hon'ble Arbitral Tribunal.

10. Aforementioned Arbitral Tribunal is requested to hold sittings in 'Madras High Court Arbitration and Conciliation Centre under the aegis of this Court' (MHCAC) by applying Madras High Court Arbitration Proceedings Rules 2017 and fee of the Hon'ble Arbitrators shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017. Hon'ble Arbitral Tribunal is requested to render an award by holding sittings at MHCAC. It is also open to Hon'ble Arbitral Tribunal to resort to Section 30 of A and C Act subject to the trajectory the matter takes. Though obvious it is made clear that it is open to the parties to add to the pleadings in the Section 17 application and it is also open to both sides to take out any other application/s if so advised and if so desired.



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M.SUNDAR, J

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

29.08.2022

kmi

Note: (i) Upload forthwith

(ii) The Registry is directed to communicate this order forthwith to

1. Hon'ble Mr.Justice N.Paul Vasantha Kumar (Retd.),
former Hon'ble Chief Justice of High Court of Jammu and Kashmir,
24-A, 2nd Street, Kamaraj Avenue,
Adyar, Chennai-600 020. Mobile: 94443 90958.
2. Hon'ble Mr.Justice M.Sathyanarayanan (Retd.),
former Hon'ble Judge of Madras High Court,
"Catholic Centre", 1st Floor, No.108, Armenian Street,
Chennai-600 001.
3. Hon'ble Mr.Justice N.Kirubakaran (Retd.),
former Hon'ble Judge of Madras High Court,
No.36, 2nd Cross Street, Rayala Nagar,
Ramapuram, Chennai-600 089. Mobile:9445025454.
4. 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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