



Arb O.P.(Com. Div.) No.258 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2022

CORAM

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

Arb O.P.(Com. Div.) No.258 of 2021

M.Ramesh
S/o.Mahadevan
Partner
M/s.Kavi Pharmacy
No.5/21, North Street, Mugavanur
Manapparai, Trichy – 621 302.

... Petitioner

Vs.

1.R.Raj Bhaskar
S/o.Mr.Raja Mariappan
Partner
Kavi Pharmacy
No.16, I Cross, Mahalakshmi Nagar
K.K.Nagar, Tiruchirapalli – 620 021.

2.P.Ramesh Vyravan
S/o.Mr.Prakasam
Partner
Kavi Pharmacy
No.37, Venkatramier Street
Nadimuthu Nagar, Pattukottai – 614 602.

3.Sudha
W/o Mr.Shivakumar
Partner
Kavi Pharmacy



Arb O.P.(Com. Div.) No.258 of 2021

Block No.2, G7, Appasamy Cityside Apartments
No.4/361, OMR, Kottivakkam
Chennai – 600 096.

4.R.Aroon
S/o. Mr.Ramesh
Partner
Kavi Pharmacy
No.41, Rajaraja Cholan Nagar
Srinivasapuram
Thanjavur – 613 009.

... Respondents

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, r/w. Section 2(1)(c)(xv); Section 10(2) of the Commercial Courts, Commercial Division, and Commercial Appellate Division of High Courts Act, 2015 praying to (a) Appoint an independent qualified sole arbitrator to hear and decide the claims of the petitioner, arising out of the partnership agreement dated 1.6.2020; (b) direct the respondent to pay the cost of this petition.

For Petitioner : Mr.AR.M.Arunachalam
For Respondents : Mr.C.Vinoth Kumar

ORDER

Four respondents in captioned matter and one N.Chandra Babu entered into a deed of partnership dated 01.06.2020 constituting a



Arb O.P.(Com. Div.) No.258 of 2021

partnership firm in the name and style 'M/s.Kavi Hospitals and Neuro Foundation' (hereinafter 'KHNF' for the sake of brevity, convenience and clarity).

2. There is an arbitration clause in the aforementioned 01.06.2020 partnership deed. Arbitrable disputes erupted, N.Chandra Babu came to this Court by way of a petition 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] and a Hon'ble Single Judge of this Court in and by order dated 07.12.2021 ordered this Section 11 petition by appointing Hon'ble Mr.Justice K.Chandru (Retd.) as sole arbitrator.

3.Mr.AR.M.Arunachalam, learned counsel for petitioner in captioned matter and Mr.C.Vinoth Kumar, learned counsel for all the four respondents in the captioned Arb OP are before this Court.

4. Learned counsel on either side submitted without disputation or disagreement that the aforementioned order dated 07.12.2021 of the learned Single Judge has been given legal quietus. Hon'ble Arbitrator has entered



Arb O.P.(Com. Div.) No.258 of 2021

upon reference, arbitration is underway and the next sitting is on 25.06.2022.

5. Be that as it may, both learned counsel before this Court submit in unison in one voice that before the Hon'ble Arbitrator [hereinafter 'AT' denoting Arbitral Tribunal for the sake of convenience], multiple interlocutory applications were moved and one such interlocutory application namely I.A.No.4 of 2022 was for impleading the petitioner before this Court (M.Ramesh, S/o.Mahadevan) as a party to the arbitral proceedings. Another interlocutory application namely I.A.No.3 of 2022 was with a prayer to produce eight documents and one of the eight documents reads as follows :

'6) The details of stock before 11.08.2021 and 11.08.2021 purchase and stock at Kavi Pharmacy.'

6. Both the aforementioned interlocutory applications were allowed i.e., prayers were acceded to in and by a common order dated 28.02.2022 made by Hon'ble AT. Both learned counsel submit that this 28.02.2022 order of Hon'ble AT has been given legal quietus or in other words, it has not been assailed in any manner known to law. This means that if there are any rights post award in this regard that will stand preserved.



Arb O.P.(Com. Div.) No.258 of 2021

WEB COPY

7. Captioned Arb.OP is predicated on a partnership deed dated 01.06.2020 between the four respondents and the petitioner. Clauses 15 & 19 of the partnership deed dated 01.06.2020 constitute the arbitration agreement (to be noted, Clauses 15 and 19 are verbatim same). The learned counsel for respondents submits that the petitioner in the captioned Arb.OP has retired from the partnership firm i.e., 'Kavi Pharmacy' constituted in and by deed dated 01.06.2020. Learned counsel for respondents points out that there is no arbitration clause in the retirement deed. Another point raised by the learned counsel for respondents is captioned Arb.OP is less than Rs.3.0 lakhs value and therefore, would not qualify to be heard by this Commercial Division under Section 2(i) of the Commercial Courts Act, 2015.

8. A careful perusal of the petition, more particularly paragraph No.22 thereat makes it clear that the petitioner has mentioned the value to be Rs.3.23 crores and has referred to the trigger notice dated 23.08.2021 in this regard.

9. In the light of narrative thus far, learned counsel sought leave to



Arb O.P.(Com. Div.) No.258 of 2021

withdraw the captioned Arb.OP but made a request to preserve the rights of the petitioner to work out his remedies if any before the pending arbitration proceedings. This request is acceded to. To be noted, though the captioned Arb.OP is going to be closed infra by way of a withdrawal endorsement, the aforementioned narrative has been made only by way of dispositive reasoning as to why the request for preserving the rights of the petitioner has been acceded to.

10. Owing to the overlap the petitioner will work out his remedy if any regarding M/s.Kavi Pharmacy before AT is learned counsel's say.

11. Be that as it may, this Court reminds itself of ***Vidya Drolia*** principle i.e., ***Vidya Drolia & Ors. Vs.Durga Trading Corporation*** reported in ***2019 SCC OnLine SC 358***, wherein the Hon'ble Supreme Court has made it clear that when in doubt the Court will make a reference. It may not be necessary to dilate on those aspects of the matter owing to the endorsement that has been made by counsel for petitioner.

12. A scanned reproduction of the endorsement made in the case file is



Arb O.P.(Com. Div.) No.258 of 2021

as follows :

The petition may be dismissed as withdrawn, preserving the rights of the petitioner to be worked out before the pending Arbitration proceedings.

13. Before concluding, it is made clear that this Court has not expressed any view or opinion on the merits of the matter and all questions raised are left open to be raised before the Hon'ble AT.

Captioned Arb.OP disposed of as closed/withdrawn albeit preserving the rights of the petitioner in aforementioned manner. There shall be no order as to costs.

13.06.2022

Index : Yes / No

Interner : Yes / No

Speaking order / Non-speaking order

ds



WEB COPY



Arb O.P.(Com. Div.) No.258 of 2021

M.SUNDAR. J.,

ds

Arb O.P.(Com. Div.) No.258 of 2021

13.06.2022