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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2022

DELIVERED ON: 22.03.2022

CORAM :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.M.A.No.3523 of 2021

and

C.M.P.No.20401 of 2021

1.A.Ezhilvanan

...Appellant/Respondent

Vs.

1.Dr.Poongothai Balaji

2.A.Anbuvaran

...Respondents/Claimants

Prayer : Civil Miscellaneous Appeal filed under Section 37(2) (b) of the Arbitration and Conciliation Act, 1996, to set aside the interim order dated 05.11.2021 (wrongly mentioned as 05.11.2020 in prayer) in Arbitration Interim Application in Arbitration Case No.391 of 2021 passed by the sole Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996.

For Appellant : Mr.P.V.Balasubramaniam
for M/s.BFS Legal

For Respondents : Mr.Vineet Subramani

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order, dated 05.11.2021, passed by the learned sole Arbitrator in an unnumbered Interim Application in Arbitration O.P.No.391 of 2021, dismissing the application for discovery by way of interrogatories and for production of documents.

2.For the sake of convenience, the appellant and the respondents shall hereinafter be referred to as "respondent" and "claimants" respectively.

3.The admitted facts of the case are as follows :

- The claimants and the respondent are siblings.
- The claimants and the respondent, along with other brothers and sisters, entered into an oral family arrangement, which was recorded in writing on 12.01.2009, for sharing of the



claims :

"a. To order partition of the immovable properties as set out in Clause III read with Item 1 Schedule-A of the Memorandum of Oral Family Arrangement dated 12.01.2009 in three equal parts and allot one equal share to each of the claimants and respondent.

b.To appoint a Commissioner to divide by metes and bounds the properties as set out in Clause-III read with Item 1 Schedule-A of the Memorandum of Oral Family Arrangement dated 12.01.2009 in three equal parts and put the claimants in possession of their one equal share each;

c.to direct the respondent to execute and register necessary partition deeds as required under Clause-IV with respect to the properties set out in Item 1 Schedule-A of the Memorandum of Oral Family Arrangement dated 12.01.2009 and if the respondent fails to do so, direct the Commissioner to execute and register necessary partition deeds as required under Clause-IV with respect to the properties set out in Item-1 Schedule-A of the Memorandum of Oral Family Arrangement dated 12.01.2009;

d.to direct the respondent to pay the costs of this proceeding; and

e.to pass such further or orders as deemed fit and proper and thereby render justice."

7.The respondent filed his reply statement to the claims made by the claimants and the case of the respondent is as follows :

- The properties sought to be partitioned, i.e., Item 1 of Schedule-A of Memorandum of Oral Family Arrangement dated 12.01.2009, viz., Dhanalakshmi Higher Secondary School ("the School" for brevity), cannot be partitioned.
- The School was taken over by Aladipatti Vaithilinga Nadar Pathirakali Ammal Educational and Charitable Trust vide resolution dated 15.06.2010, prior to which, it was a proprietorship concern of the mother of the parties. Therefore, the Trust and its Members have to be made as a party to the claim.
- The School is a recognized private school under Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, and consists of approximately 2300 students. All official permissions to run the school have been obtained from the State Government, based on the properties of the school, therefore, partitioning of the properties belonging to the School will disrupt the operations and functioning of the School.
- The Family Arrangement explicitly speaks about another School, i.e., Macaulay English School (Item 2 of Schedule-



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- A) and a Petrol pump agency (Item No.4 of Schedule-A), and purposefully omits to speak about the Dhanalakshmi Higher Secondary School, for the reason that the properties of the Dhanalakshmi Higher Secondary School cannot be partitioned.
- The School, through the Trust, has availed Bank loans by mortgaging the lands and buildings which are currently used to run the said School, which are now sought to be partitioned. Therefore, the claim is bad for non-joinder of Bank as well as the Trust as parties to the claim.
 - Further, the claimants have formed a new Trust in the name of "Aladi Aruna Foundation" and they have illegally removed the respondent from the post of Secretary and Correspondent of the School, and the said new Trust has now illegally taken over the control and management of the School.

8.It is the further case of the respondent that, on the guise of surety, the 2nd claimant obtained his signature on certain papers, which were later on revealed to be sale documents in respect of Pudhupatti lands (Item No.6 of Schedule-B). When questioned, the claimants assured to return the share of the respondent in respect of the said Pudupatti lands, however, they failed to return the same. Therefore, the respondent made a counter claim for restoration of the share of the respondent in Pudupatti lands, more fully described in Item No.6 of Schedule-B.

9.After hearing both sides, the following issues were framed by the Arbitral Tribunal on 22.09.2021.

"1.Whether the claimants are entitled to partition of the properties set out in Item 1 Schedule-A of the Memorandum of Oral Family Arrangement dated 12.01.2009?

2.Whether respondent's counter claim is arbitrable?

3.Whether respondent is entitled to a direction against claimants to return the Pudhupatti lands?

4.Whether the claim is bad for non-joinder of necessary parties?

5.To what relief, the parties are entitled?"

10.After framing of issues, the respondent has come out with the impugned application for discovery by way of interrogatories and for production of documents by the other side, and has delivered the following interrogatories:

"(a) What are the specifications, extent, and the entire schedule of property in respect of both the land and building, on the basis of which the permission to establish and manage Dhanalakshmi Higher Secondary School was accorded by the Government/Department? The certified copy of Form



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No.II, as prescribed under Rule 5(5) r/w Section 5A of the Private Schools Act that was submitted to the Government Authorities in respect of DHS School and all other relevant documents are to be produced before this Hon'ble Tribunal.

(b) What were the necessary government approvals and permissions accorded for operating and running of Dhanlakshmi Higher Secondary School? Produce the documents submitted to Government authorities in respect of such approvals and permissions.

(c) What are the relevant resolutions passed by the Vaithilinga Nadar Pathirakali Ammal Education and Charitable Trust basis which the management of Dhanlakshmi Higher Secondary School was allegedly transferred to Shiv Nadar Foundation? The Claimants need to produce the certified copy of such resolution.

(d) What is the official intimation thereof to the Government/ Department of the change of educational agency from the old trust to the new Shiv Nadar Trust? The Claimants need to produce the communication/any document regarding the same.

(e) What are the various Government/Department permissions and approvals allegedly accorded to Shiv Nadar Foundation to operate and manage Dhanlakshmi Higher Secondary School? The Claimants need to corroborate the same by producing the relevant documentary proofs.

(f) The Claimants must place on record the documents pertaining to loan obtained by Dhanlakshmi Higher Secondary School and the name of the guarantors for obtaining of such loans.

(g) The Claimants must produce certified copy of the Trust Deed, Bye-Laws of Vaithilinga Nadar Pathirakali Ammal Education and Charitable Trust;

(h) The Claimants must provide certified copy of the Trust Deed, Bye laws of Shiv Nadar Foundation."

11. The learned sole Arbitrator, by an order dated 05.11.2021, dismissed the impugned application, filed by the respondent.

12. Challenging the order of dismissal, dated 05.11.2021, passed by the learned sole Arbitrator, the respondent/appellant has filed the present appeal before this Court.

13. The learned counsel for the appellant/respondent therein, submitted that the School is functioning since 1913 in the said properties, which are now sought to be partitioned. The learned counsel further submitted that, more than 2300 students are studying in the School and the permission/sanction for the said



School was obtained only on the basis of the immovable properties dedicated to the School, which are now sought to be partitioned, therefore, the partition of the immovable properties belonging to the School, will not only disrupt the functioning of the School, but will also destroy the original educational purpose for which the School was established. The learned counsel would further submit that, earlier, the School was under the proprietorship of the mother of the parties and by a resolution dated 15.06.2010, the mother of the parties handed over the management of the School to the Vaithilinga Nadar Pathirakali Ammal Education and Charitable Trust. The learned counsel further submitted that the respondent has been a member of the said Trust and he was the Secretary of the School. Further, the School, through the said Trust, has availed loans from the Bank by mortgaging the immovable properties belonging to the School, for which, EMIs are being paid by the said Trust. The learned counsel further submitted that the claimants have forcibly and illegally taken over the management of the School by forming a new Trust and the respondent was ousted from the post of Secretary and Correspondent of the School, and now, he is not in possession of any of the documents relating to the School and only the claimants are in possession of all the documents and hence, it has become necessary for the respondent to deliver interrogatories in writing for examination of the claimants and production of certain documents for proper adjudication of the issues before the Tribunal. The learned counsel would further submit that no prejudice would be caused if the impugned application is allowed. Therefore, the learned counsel prayed to set aside the order of the learned Arbitrator and to allow the impugned application.

14. Per contra, the learned counsel for the claimants/respondents herein, submitted that, this Court, in the order dated 11.02.2020, made in O.P.No.498 of 2018 under Section 34 of the Arbitration and Conciliation Act, 1996, has categorically found that there is no document to show that the subject properties have been endowed/dedicated to the School, but all the documents would show that the lands are private properties and therefore, the properties can be partitioned. The learned counsel would further submit that the Vaithilinga Nadar Pathirakali Ammal Education and Charitable Trust has no say in the present claim, inasmuch as the management and control of the said School does not fall within the scope of the Family Arrangement. The learned counsel would further submit that the Bank loans have completely been settled and the Bank, by its letter dated 16.02.2018, has communicated that the entire loan has been repaid and that the Bank is ready to return the properties documents which are free of mortgage, which fact has also been relied upon by this Court in O.P.No.498 of 2018. The learned counsel would further submit that the interrogatories



sought to be delivered by the respondent are completely irrelevant to decide the issues before the Tribunal, more specifically, when the respondent himself has been a Member of the Vaithilinga Nadar Pathirakali Ammal Education and Charitable Trust and Secretary of the School, he is now seeking the particulars and the documents relating to the Trust and the School. The learned counsel further submitted that the School is now functioning at a different place and not on the subject properties, which are sought to be partitioned, therefore, no prejudice would be caused by partitioning the subject properties. The learned counsel re-iterated that the findings rendered by this Court in O.P.No.498 of 2018 are completely in their favour and hence, in order to delay the proceedings, the respondent has come out with this impugned application, which has been rightly dismissed by the learned Arbitrator. Therefore, the learned counsel prayed for dismissal of this appeal.

15. Heard the learned counsel on either side and perused the entire materials available on record.

16. The impugned application is filed by the respondent seeking to deliver the interrogatories as extracted supra to the claimants, in order to prove his specific stand that the properties in question belong to the School. This Court has carefully perused the interrogatories sought to be delivered by the respondent. It is well settled that, unlike cross-examination, the scope of interrogatories are narrower and the queries raised should be relevant to the issues on hand and only then, the interrogatories can be allowed.

17. Therefore, the only point for consideration is, whether the interrogatories sought to be delivered are relevant to decide the issues before the Arbitral Tribunal.

18. It could be seen from the Minutes of the Sittings at Arbitral Tribunal that the parties are yet to lead their evidence in the Arbitration proceedings. Since any finding rendered by this Court at this stage will have a bearing on the arbitral proceedings, this Court cautiously confines itself to decide as to whether the interrogatories and the documents sought for by the respondent are relevant to decide the issues before the Arbitral Tribunal or not.

19. Insofar as the queries (g) and (c) are concerned, seeking the particulars and resolutions in respect of Vaithilinga Nadar Pathirakali Ammal Educational and Charitable Trust, it is the specific case of the respondent himself that he is a Trustee of the said Trust. The respondent only alleges that he was removed from the post of Secretary of the School, but it is not his case that he is no longer a member of the Trust. Moreover, the respondent consistently takes a stand that the Trust and Trustees should be made as parties to the Arbitration



proceedings. Further, it is noteworthy that the respondent has marked a copy of the Trust Deed as Ex.R4 on his side, during the first round of Arbitration Proceedings. Therefore, when the respondent himself continues to be a member of the said Trust even according to him, and has marked the document earlier on his side in respect of the Trust, the discovery of particulars and documents which are in his own domain, cannot be entertained. Accordingly, queries (g) and (c) fail.

20.The interrogatories (d), (e) and (h) seeks the particulars and relevant resolutions in respect of "Shiv Nadar Foundation", and official intimations made to the Government and approval obtained from Government in respect of "Shiv Nadar Foundation" and also the Trust Deed and By-laws of "Shiv Nadar Foundation". It is pertinent to note that the respondent has nowhere mentioned the name of such "Shiv Nadar Foundation" in any of his pleadings and the only new Trust, which the respondent alleges, to have been created by the claimants, both in his affidavit and in all other pleadings earlier to the impugned application, is "Aladi Aruna Foundation". It is the case of the respondent that the "Aladi Aruna Foundation" has now taken over the management of the School, by ousting him from the post of Secretary of the School. However, strangely, in the interrogatories, the respondent has introduced a new name called "Shiv Nadar Foundation", which is totally not backed by any pleadings. Assuming for the sake of arguments that both are one and the same, nowhere it is admitted by the claimants that either of the aforementioned Trusts has taken over the management of the School or they are in control and Management of the said Trusts or the School. In fact, there is no whisper about either of the aforementioned Trusts by the claimants in any of their pleadings. Therefore, the queries (d), (e) and (h) with regard to "Shiv Nadar Foundation", which is not supported by pleadings, is totally not germane to the issues before the Arbitral Tribunal and fail on the ground of irrelevancy. Query (c) fails also on the ground of irrelevancy, as it relates to "Shiv Nadar Foundation".

21.As far as queries (a), (b) and (f) are concerned, the main purport of these queries as contended by the respondent in his affidavit filed in the impugned application as well as in the grounds of this appeal is to prove that the properties which are now sought to be partitioned belong to the School and are owned by the School. For that purpose, the respondent has sought for the Form-II under Rule 5(5) r/w. Section 5A of the Private Schools Act that was submitted to the Government and the necessary sanction/approval granted by the Government for operating and running the School. This Court is of the considered opinion that mere specifications/declarations made in the Forms regarding the extent of land and schedule of property on which the School is situated, or the sanction accorded by the



Government based on such specifications/declarations, are not sufficient to confer any right on the School over the properties declared therein. Contrarily, the respondent himself has admitted in Para No.4 of his reply statement to the claim that the claimants are the co-owners of the land and buildings in which the School is situated, by virtue of the Family Arrangement. Even assuming for the sake of arguments that the respondent can establish the ownership of the School over the subject properties though the Forms/sanctions/permissions, it would have legs to stand only when the School is still running in the properties in question. However, it is the specific case of the claimants that the School is no longer functioning in the subject properties, but it has shifted to a new location and further, the loan availed by the School has entirely been settled. Moreover, the claimants have nowhere admitted that they have now taken over the control and management of the School or are in possession of the documents sought for in queries (a), (b) and (f). While so, delivering interrogatories beyond the admitted domain of the claimants would be probing in nature, which cannot be permitted. As contended by the claimants, it is very well open to the respondent to collect the documents which he seeks, from the public domain. Therefore, the queries (a), (b) and (f) also fail.

22.The learned Arbitrator himself has rightly held in Para No.10 of the impugned order that it is open to the respondent to lead evidence to substantiate his plea, which, this Court also deems fit.

23.In the light of the narrative supra, this Court finds that all the interrogatories sought to be delivered by the respondent through the impugned application fail on various grounds, as discussed in the foregoing paragraphs, and therefore, this Court is not inclined to interfere with the order passed by the learned Arbitrator, dismissing the impugned application.

24.Accordingly, this Civil Miscellaneous Appeal is dismissed and the impugned order passed by the learned Arbitrator, dated 05.11.2021, stands confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

Mr.N.Authinathan,
(Retd. Judge, High Court, Madras)
The Sole Arbitrator,
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Copy To

The Section Officer,
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+1cc to M/s.Vineet Subramani, Advocate, S.R.No.18949

C.M.A.No.3523 of 2021

BR(CO)
RGA(30/03/2022)