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O.P.No.40 of 2019, etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.06.2023
Pronounced on	10.08.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

O.P.Nos.40 of 2019, 863 & 864 of 2018,
350 & 391 of 2017 and 122 & 269 of 2014
and
A.No.1364 & 1365 of 2023, 7719 of 2018, 2062, 333,
37 & 38 of 2017, 4253 of 2016 and 3288 of 2014
and
O.A.No.924 of 2018 and 1120, 727 & 728 of 2016
and
C.S.No.600 & 939 of 2016

O.P.No.40 of 2019:-

- 1.R.Subbulakshmi (deceased)
- 2.R.Ramasubbu
- 3.RR.Gopaljee

... Petitioner

[**petitioners 2 and 3 are already on record and recorded as legal heirs of the deceased first petitioner as per the order dated 02.11.2022 in A.No.2384 of 2022]

Vs.



O.P.No.40 of 2019, etc., batch

WEB COPY

- 1.R.Venkitapathy (deceased)
- 2.R.Krishnamoorthy (deceased)
- 3.R.Lakshmipathy
- 4.R.Sathyamurthy
- 5.K.Rajalakshmi
- 6.K.Ramasubbu
- 7.N.Krishnakumari
- 8.Sri Vidhya K.Arjun
- 9.K.Venkataraman
- 10.Geetha Nagarajan
- 11.V.Jayashree
- 12.Janani

[**Respondents 5 to 9 are brought on record as legal heirs of the deceased 2nd respondent as per order dated 09.08.2021 in A.No.2642 of 2021.

**Respondents 7 and 8 are deleted, i.e., strike out as per order dated 01.02.2023 in Appln.Nos.379 & 380 of 2023

**Respondents 10 to 12 are brought on record as legal heirs of deceased 1st respondent as per order dated 02.11.2022 in A.No.2384 of 2022]

... Respondents



O.P.No.40 of 2019, etc., batch

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PRAYER:

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 29.09.2018 passed by the Arbitral Tribunal which had arisen out of the dispute between the petitioners and the respondents herein and direct the respondents to pay the costs of the proceedings.

For petitioner : Ms.Chitra Sampath, Senior counsel,
for Mr.T.S.Baskaran

For Respondents : Mr.Vijay Narayan, Senior counsel,
for Mr.Prasad Vijayakumar
for R1, R10 to R12

Mr.AL.Somayaji, Senior counsel,
for Mr.S.Elambarathi
for R2, R5, R6 and R9

Mr.Abdul Saleem, Senior counsel,
for Mr.Vijay Mehanath, for R3

Mr.P.S.Raman, Senior counsel,
for Mr.P.Giridharan, for R4



O.P.No.40 of 2019, etc., batch

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COMMON ORDER

These Original Petitions are filed challenging the three interim awards passed by the Arbitral Tribunal (hereinafter called as the Tribunal) dated 28.11.2013, 15.03.2014 and 29.09.2018.

2. The parties shall hereinafter be referred to by their respective ranks in the award passed by the Tribunal.

3. THE BRIEF FACTS OF THE CASE ARE AS FOLLOWS:

3.1 The business of the Firm is the publication of a Tamil Daily Newspaper called “Dinamalar”. The said Tamil Daily was started by Late T.V.Ramasubbiyer at Trivandrum in 1951. The said T.V.Ramasubbiyer was blessed with five male issues, who were the claimants before the Tribunal. In the year 1957, T.V.Ramasubbiyer had shifted the operations of Dinamalar from Trivandrum to Tirunelveli. In the year 1960, all the 5 claimants were

4/183



O.P.No.40 of 2019, etc., batch

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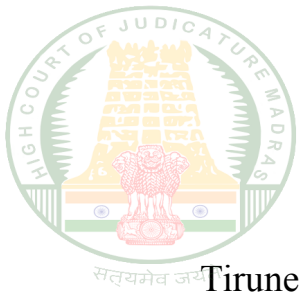
added as partners of business by T.V.Ramasubbiyer. Thereafter, in the year 1972, the firm was reconstituted and the eldest son/R.Venkitapathy/first claimant was retired and his wife V.Saroja was inducted into the partnership.

The following editions were subsequently started in the respective years:

Trichy Edition – 1966
Chennai Edition – 1979
Madurai Edition – 1980
Erode Edition – 1984
Pondicherry Edition – 1991
Coimbatore Edition – 1992
Vellore Edition – 1993
Nagarkoil Edition – 1996
Salem Edition – 2000

3.2 Further, it appears that, T.V.Ramasubbiyer was the editor, printer and publisher of Tirunelveli and Tiruchirappalli Editions till 05.11.1975.

After the said date, the second claimant/R.Krishnamoorthy became the editor, printer and publisher for Tirunelveli, Tiruchirappalli, Chennai, Madurai and Erode editions. The said T.V.Ramasubbiyer died on 21.07.1984 and on his demise, the firm was reconstituted. At that time, the first claimant was not inducted as a partner. After 1985, the third claimant became the publisher for



O.P.No.40 of 2019, etc., batch

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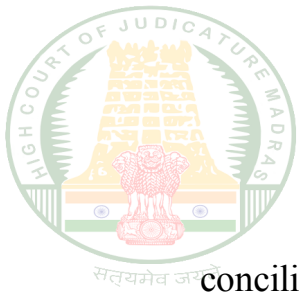
Tirunelveli, Tiruchirappalli, Chennai, Madurai and Erode editions. Thereafter, on demise of V.Saroja/wife of first claimant, the firm was again

reconstituted and the first claimant was inducted as a partner.

3.3 There were disputes between the partners of the firm after the demise of T.V.Ramasubbiyer and with regard to the same, several suits were filed between the partners before various Courts.

3.4 In the year 1999, the litigation was started by the first, fourth and fifth claimants against the second claimant and sons and daughters-in-law of third claimant alleging that they have started a newspaper “Kaalai Malar”.

3.5 In a suit filed by the first, fourth and fifth respondents, they had sought for appointment of a Receiver. Accordingly, a Receiver was appointed, against which an appeal was filed and by order dated 23.01.2007, the said appointment was stayed. Further, as per the direction of this Court,



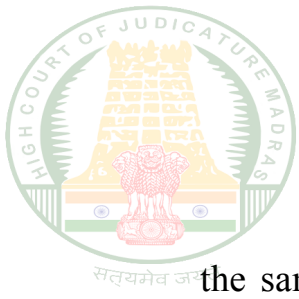
O.P.No.40 of 2019, etc., batch

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conciliations were held between the partners and a memo of compromise was filed by the parties, in which they had agreed to refer all the disputes, which arises out of partnership deed dated 23.03.1997, to the Arbitral Tribunal constituted by three Arbitrators.

3.6 All the 5 claimants had filed their claims and counter claims before the Arbitral Tribunal and completed their pleadings. Based on the said pleadings, the Tribunal had framed 45 issues on 18.07.2007.

3.7 At this juncture, on the demise of the presiding Arbitrator/K.Venkatasamy, Mr.Justice T.Somasundaram, retired Judge was appointed as presiding Arbitrator and the parties had let in their oral and documentary evidences before the Arbitral Tribunal. On 27.02.2012, the fifth claimant had filed a petition, which was supported by an affidavit stating that he had issued a notice of dissolution under Section 43 of the Partnership Act, 1932 and prayed the Tribunal to take the said notice on record and deal with



O.P.No.40 of 2019, etc., batch

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the same in accordance with law. The fourth claimant had objected for the issue of dissolution being considered by the Tribunal. However, vide common order dated 23.07.2012, the Tribunal had decided that the Tribunal has jurisdiction to deal with the issue of dissolution, since the said notice falls within the scope of the aforesaid memo dated 18.01.2007, which was signed by all the claimants and based on which the disputes were referred to Arbitration. Pursuant to the said order, the claimants 1, 2, 3 and 5 had filed their additional pleadings with regard to the relief of dissolution of partnership and subsequently, the Tribunal had framed 8 additional issues on 09.10.2012.

3.8 Further, the first and second claimants had filed an original application in O.A.No.132 of 2012 before this Court against the said notice of dissolution and this Court vide order dated 30.10.2012, had restrained the fifth claimant from interfering with the management of the business which includes both circulation and banking operations of the first and third claimants in respect of Chennai, Puducherry, Madurai and Coimbatore



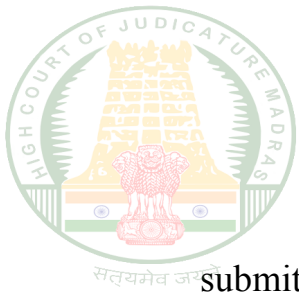
O.P.No.40 of 2019, etc., batch

editions of Dinamalar Newspaper.

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3.9 The fourth claimant had also filed a suit in C.S.No.748 of 2012 challenging the common order dated 23.07.2012 passed by the Tribunal. The said suit was rejected by this Court vide judgment and decree dated 26.11.2012 and the same was also confirmed in O.S.A.No.103 of 2012 vide judgment and decree dated 27.02.2013. Aggrieved by the said judgment and decree, the fourth claimant had filed a Special Leave Petition before the Hon'ble Supreme Court. In the said petition, the Hon'ble Supreme Court had passed an order dated 12.09.2013 directing the Tribunal to decide the 45 issues, which was framed at the first instance and thereafter to decide the additional issues with regard to the dissolution of firm.

3.10 Pursuant to the direction of the Hon'ble Supreme Court, the Tribunal had dealt with the 45 issues and passed an interim award dated 28.11.2013, wherein, it has rejected all the claims (except Issue No.15)



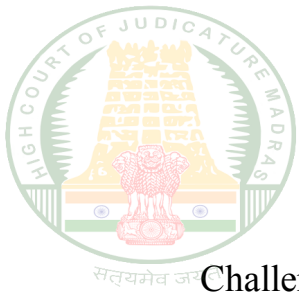
O.P.No.40 of 2019, etc., batch

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submitted by the parties and also dismissed all the suits, which were referred to Arbitration. To set aside the said award dated 28.11.2013, the claimants 2 and 3 had filed a petition in O.P.No.350 of 2017 before this Court. Further, the fourth claimant has also filed a petition in O.P.No.122 of 2014 to set aside the said award.

3.11 At this juncture, the Tribunal had passed the second interim award dated 15.03.2014, in and by which the Additional issues were considered. In the said interim award, the Tribunal had held that the firm “Dinamalar” stood dissolved on 27.02.2012 and also ordered the parties to maintain *status quo*. To set aside the said interim award, the claimants 2 and 3 had filed a petition in O.P.No.391 of 2017 and fourth claimant filed a petition in O.P.No.269 of 2014 before this Court.

3.12 That apart, the Tribunal had also passed the third interim award dated 29.09.2018 with regard to winding up of the partnership firm.



O.P.No.40 of 2019, etc., batch

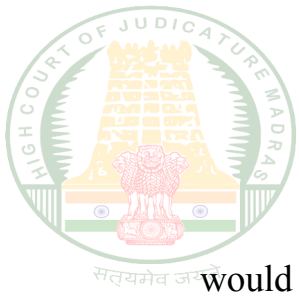
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Challenging the said interim award the second, third and fourth claimants have filed the petitions in O.P.No.863 and 864 of 2018 and 40 of 2019. The parties have been referred hereinafter as their original status before the Tribunal.

4. THE SUBMISSIONS MADE BY THE RESPECTIVE LEARNED SENIOR COUNSEL ARE AS FOLLOWS:-

4.1 Mr.Vijay Narayan, learned Senior counsel appeared for 1st claimant and his legal heirs. Mr.AL.Somayaji, learned Senior counsel appeared for 2nd claimant. Mr.Abdul Saleem, learned Senior counsel appeared for 3rd claimant. Ms.Chitra Sampath, learned Senior counsel appeared for 4th claimant and his legal heirs. Mr.P.S.Raman, learned Senior counsel appeared for 5th claimant.

4.2 Mr.AL.Somayaji, learned Senior counsel appearing for 2nd claimant would submit that since disputes had arose among the parties with regard to the firm, several suits were filed and the same were pending. Further, he

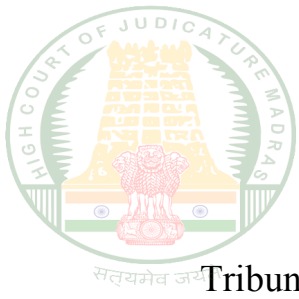


O.P.No.40 of 2019, etc., batch

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would submit that all the parties had filed a memo in OSA.No.282 of 2006 to refer all the differences and disputes, arising out of or in relation to the business covered by the partnership deed dated 23.03.1997, including all the issues raised in the suits, to the Arbitral Tribunal and accordingly, all the claimants have filed their respective claims before the Tribunal.

4.3 It was further submitted by the learned Senior counsel that pending the arbitration proceedings, one of the claimants, R.Sathiyamurthy, who is the 5th claimant, had issued a dissolution notice dated 27.02.2012 to dissolve the firm with effect from the date of issuance of the dissolution notice. The said notice was intimated to the Arbitral Tribunal by way of an affidavit dated 27.02.2012. The said aspect was challenged before the Court of law and finally before the Hon'ble Supreme Court. In view of the settlement memo filed by the parties, the Hon'ble Supreme Court in SLP.No.14417 of 2013 dated 12.09.2013, had passed an order directing the Arbitral Tribunal to pass an award with regard to the 45 issues, which were framed by the Arbitral



O.P.No.40 of 2019, etc., batch

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Tribunal on 18.07.2007 and thereafter to decide the issue of dissolution of the firm as per the procedure evolved by them.

4.4 By referring the Paragraph Nos.36, 37, 38 and 39 of the interim award dated 28.11.2013, the learned Senior counsel would further submit that the Tribunal had rejected all the 45 issues and while rejecting, the Tribunal, in a preconceived notion, had stated that the claimants 1 to 5 are entitled to the relief of declaration and held that since the Dinamalar partnership firm consisting of five partners, each of them will be entitled to 1/5th interest in all the assets of the partnership firm. Further, the Tribunal had held that the question, as to *whether the claimants 1 to 5 are entitled to the allotment of edition of Dinamalar newspaper owned by the partnership firm towards their share of interest in the assets of partnership declared in the clause iii*, will be considered in the next part of the Award, wherein as per the order of the Hon'ble Supreme Court of India dated 12.09.2013 in SLP (civil) No.14417 of 2013, the Tribunal will take up the issue with regard to the dissolution of the firm.



O.P.No.40 of 2019, etc., batch

WEB COPY

4.5 The learned Senior counsel would also contend that the above award was passed in a preconceived notion as if the allotment of the editions of Dinamalar would be considered while dealing with the issue of dissolution of the firm. Further, he would submit that the Hon'ble Supreme Court had directed the Tribunal to determine the issues of dissolution and when such being the case, the question of allotment of the editions does not arise.

4.6 He would also submit after deciding all the 45 issues, the Tribunal has to take up the issues independently with regard to the dissolution of firm. However, the Arbitral Tribunal had proceeded as if that the issue pending before the Tribunal is with regard to the partition of the properties and ignored the whole aspect that the pending issue was only with regard to the dissolution of the firm. Therefore, he would submit that in non-application of mind, the Arbitral Tribunal proceeded to pass an award, which is not sustainable in law.

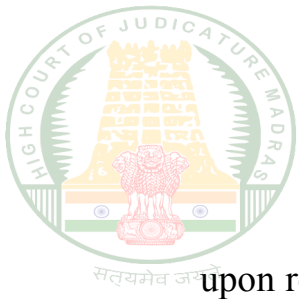


O.P.No.40 of 2019, etc., batch

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4.7 Another important legal issue advanced by the learned Senior counsel was that the Arbitral Tribunal is not empowered to pass the award with regard to the dissolution and winding up of the firm and the said power is only available with the Court. When such being the case, they should have decided the maintainability of the proceedings with regard to the dissolution. However, the issue of maintainability was not at all decided by the Tribunal.

4.8 The learned Senior counsel would further submit that as per Section 48(b)(i) of the Act, while deciding the dissolution and winding up of the partnership firm, the Tribunal has to decide the payment of the debt of the firm to the third parties and the Tribunal cannot decide the issue relating to the debt payable by the firm to the third parties since they are neither a party to the partnership deed nor a party before the Arbitral Tribunal. In the disputes relating to the third parties, the Arbitral Tribunal cannot entered



O.P.No.40 of 2019, etc., batch

upon reference and the same is not arbitrable.

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4.9 The learned Senior counsel would submit that the dispute and the issue to be decided with regard to the dissolution and winding up of the partnership firm is right in *rem* and the same cannot be decided by the Arbitral Tribunal and the Arbitral Tribunal can only pass the judgement in *personam*. Further, Section 44 of the Partnership Act makes it clear that the order of dissolution can be passed by the Court. Therefore except the Court, no other body can pass the order of dissolution. Hence, he would submit that the Tribunal is incapacitated from passing the order of dissolution of the firm and without any jurisdiction, the Tribunal had passed the award. Therefore, he would contend that the said award is non-est in law and the same as liable to be rejected.

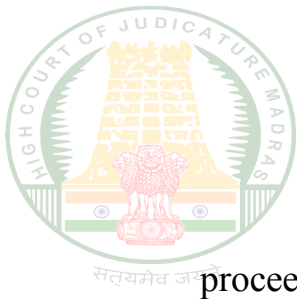
4.10 The learned Senior counsel would submit that when the memo was filed, there was no intention among the parties with regard to the



O.P.No.40 of 2019, etc., batch

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dissolution of the firm. This idea of dissolution arose only by virtue of notice dated 27.02.2012, i.e., five years after filing of memo to refer the dispute to the arbitration by the 5th claimant. Hence, even assuming the partnership firm was dissolved by virtue of the notice dated 27.02.2012, the Tribunal had passed an award taking into consideration of the interest of the partners and distributed various editions to the claimants. However, in the present case, there are very many issues of the third parties like employees, secured and unsecured creditors, etc., are involved. Hence, without hearing those parties with regard to their partnership deed, the Arbitral Tribunal cannot distribute the divisions of the various editions to different parties. Further, the Bank would have lend money only for the reason that these groups were in a single entity. In the event of distribution, the interest of the Bank would be affected prejudicially and they may recall the loan. These aspects can be considered only by the Court by sending notice and not by the arbitrator through its arbitration proceedings. Therefore, he would submit that the award passed by the Arbitral Tribunal is not proper and therefore, he prayed this Court to hold that the Arbitral Tribunal have no jurisdiction to conduct the arbitral



O.P.No.40 of 2019, etc., batch

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proceedings to complete the process of dissolution and winding up of the partnership firm. In this regard, he has referred to the following judgements of the Hon'ble Supreme Court:

- (i) ***Vimal Kishor Shah and others vs. Jayesh Dinesh Shah and others*** reported in ***(2016) 8 SCC 788***;
- (ii) ***A.Ayyasamy vs. A.Paramasivam and others*** reported in ***(2016) 10 SCC 386***;
- (iii) ***Booz Allen and Hamilton Inc., vs. SBI Home Finance Limited and others*** reported in ***(2011) 5 SCC 532***;
- (iv) ***T.A.Kadeeja vs. R.K.Manjusha*** in ***CRP.No.439 of 2016 (B)***;

4.11 Further, he would contend that the at the time of filing the claim statement, the 2nd and 3rd claimants have stated that the circulation has to be restricted to the particular area alone. Even though they made the said claim, the Arbitrator cannot pass an award, which is against the Constitution of



O.P.No.40 of 2019, etc., batch

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India. The Constitutional right cannot be waived by any citizen, even on their own. However, the Arbitral Tribunal had passed an award restraining the areas to sell, various edition of the claimants as allotted, which was in violations of Article 19(1)(g) of the partnership deed and also against the Constitution of India. In this regard, he referred to the judgement of the Hon'ble Supreme Court, which are as follows:

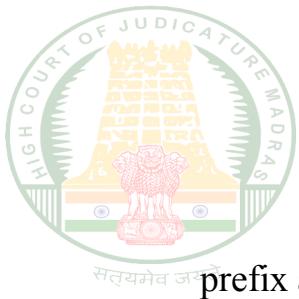
(i) *Express Newspapers Pvt. Ltd., and others vs. Union of India and others* reported in (1986) 1 SCC 133;

(ii) *Indian Express Newspapers (Bombay) Private Limited and others vs. Union of India and others* reported in (1985) 1 SCC 641;

(iii) *Basheshar Nath vs. Commissioner of Income Tax, Delhi and another* reported in AIR 1959 Supreme Court 149;

(iv) *Justice K.S.Puttaswamy (Retd.) and another vs. Union of India and others* reported in (2017) 10 SCC 1;

4.12 The learned Senior counsel further submitted that the Tribunal had passed an award that the trademark of “Dinamalar” can be used with



O.P.No.40 of 2019, etc., batch

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prefix and suffix. However, according to him, this is not permissible under the Trademark Act. As per the provisions of the Trademark Act, for using the said prefix and suffix, they have to move an appropriate application before the Registrar of Trademark. Without making any amendment, the parties cannot make any prefix or suffix as ordered by the learned Arbitrator in their award. Further he referred the judgement of the Hon'ble Supreme Court in *A.Ayyasamy*, which states that issues pertaining to the trademark cannot be decided by the Arbitrator. Further, he contended that the Trademark Certificate was produced by Mr.P.S.Raman, learned Senior counsel for the fifth claimant only at the time of arguments and the same was not at all marked as exhibits. Hence, he would submit that the award is liable to be set aside.

4.13 Ms.Chithra Sampath, learned Senior counsel appearing for the 4th claimant argued this matter on the point that though the 4th claimant asked for



O.P.No.40 of 2019, etc., batch

WEB COPY

the rendition of accounts, the said claim was not considered, even at the time of passing of the first interim award. However, the same was considered in the second interim award, wherein the Arbitrator had rejected the plea of the 4th claimant as if the 4th claimant had approved the accounts every year. However, she would submit that certain discrepancies were came to the knowledge of the 4th claimant only at the time of examination of the 2nd and 3rd claimants. Further, she would contend that the issue of rendition of accounts can be raise at any point of time. When the parties have any valid materials or input as received by them, to verify the said aspects, the parties can ask for the rendition of accounts to find out the malpractice, etc., by other parties. In the present case, while rejecting the plea of the 4th claimant, the Tribunal had ordered for the appointment of the Auditor to produce the books of accounts of the Firm from the year 1997-98 to 2011-12.

4.14 Further she would submit that the justification, which was provided by the Arbitral Tribunal with regard to the rejection of the claim of

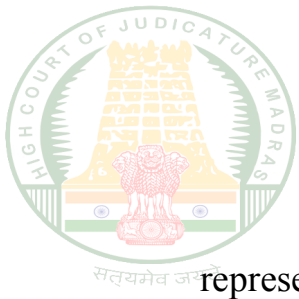


O.P.No.40 of 2019, etc., batch

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the 4th claimant for the rendition of account, was that the accounts from the year 1997 to 2012 were audited and tax-audit was also conducted and hence, the same cannot be re-opened. Further, the Tribunal had arrived at a conclusion that those accounts were approved by the 4th claimant. The contention of the 4th claimant was that nowhere he has admitted or approved the accounts from the year 1997 to 2012 but he had received the circulation of the same and in the said circulation, no material have been placed with regard to the vouchers and other expenses. Further she would contend that whenever some fraudulent act, malpractice, etc., has come to the knowledge of the claimants, it is up to any claimant to ask for the rendition of accounts.

4.15 She would also contend that the 4th claimant had only asked for the rendition of accounts. However, as if the accounts are requested to be re-opened for assessment in the income tax matters, the Arbitral Tribunal had stated that the accounts cannot be re-opened. The rendition of accounts will not amount to re-opening of the accounts. The rendition of accounts is nothing but only the inspection by the 4th claimant or through his authorised

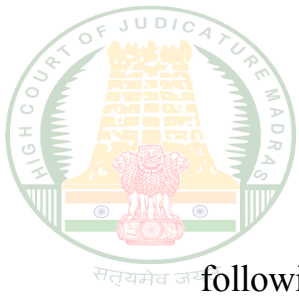


O.P.No.40 of 2019, etc., batch

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representatives. If any malpractices or materials come into picture, then the same can be brought into knowledge of the Court and if it is approved by the Court, thereafter only, the question of modifications, alterations would come into picture by citing the reasons of concealment of facts or non-disclosure of certain materials to the Auditor. Even in that case also, it will not amount to reopen. In the rendition of accounts, if no material is traced out after inspection, the original assessment will be followed. However, in the case of reopening of the assessment, necessarily the final assessment has to be made even if there is no change in the original assessment. Therefore, she would submit that by confusing the reopening and rendition of the accounts, the Arbitrator had rejected the plea in a non-application of mind.

4.16 Further it was submitted by her that her client had restricted his claims and challenged only with regard to the issue of rendering of accounts and not challenging the issues with regard to the dissolution of the firm and all other aspects. Further, in support of her contentions, she referred to the



O.P.No.40 of 2019, etc., batch

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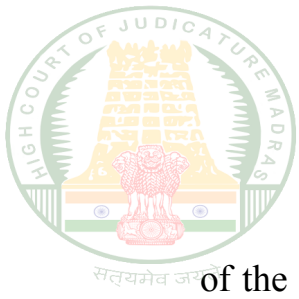
following case laws:

(i) ***Bawana Infra Development Pvt. Ltd., vs. Delhi State Industrial & Infrastructure Development Corporation Limited (“DSIIDC”) reported in 2023 SCC OnLine Del 1569;***

(ii) ***J.G.Engineers Private Limited vs. Union of India and another reported in (2011) 5 Supreme Court Cases 758;***

Hence, she prayed to pass appropriate order for rendition of accounts and with regard to all other aspects, she would submit that her client is agreeable for the awards of the Tribunal.

4.17 Mr.Abdul Saleem, learned Senior counsel appearing for the 3rd claimant would submit that all the clauses in the partnership deed has to be read together and thereafter the meaning has to be construed. Merely, once if any partner expressed consent, it does not mean that the partnership shall be dissolved at “Will” and but it has to be dissolved in other terms and conditions of the partnership deed and taking into consideration of the nature of business, which the claimants have been carrying on, and for the interest



O.P.No.40 of 2019, etc., batch

WEB COPY

of the partners as well. This aspect was not considered in proper perspective by the Tribunal while passing all the three awards.

4.18 Further, he would contend that since the Tribunal had jurisdiction to deal with the aspects of the dissolution only by virtue of all the 45 claims, the Mandate of the Tribunal was expired/completed as soon as when the Tribunal had decided that the claimants are not entitled for all the claims by virtue of rejection of all the 45 issues by the Tribunal. Hence, when the 45 issues were rejected by the Tribunal, the question of proceeding with the aspect of dissolution does not raise. Further, the Hon'ble Supreme Court had directed to deal with the aspect of dissolution only after deciding the 45 issues. Hence, the Tribunal should have considered its jurisdiction to deal with the dissolution and winding up of the partnership firm is permissible or not.

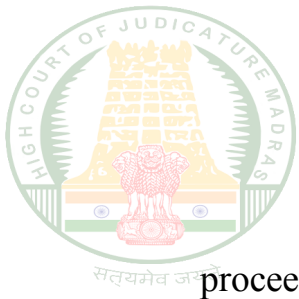


O.P.No.40 of 2019, etc., batch

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4.19 He would also contend that in terms of Section 48 of the Partnership Act, after dissolution, certain rules has to be followed with regard to the disbursement of the assets. In the present case, the said rules have not been followed and they had proceeded only with the process of winding up of the firm. Further, he had reiterated the arguments of Mr.AL.Somayaji, learned Senior counsel appearing for the second claimant and submitted that in the process of settlement of the creditors, notice has to be issued to the 3rd parties with regard to the acceptance and denial of the claims. They have to call the debtors also. However, those issues cannot be decided by the learned Arbitrator. Hence, the learned Arbitrator cannot have jurisdiction to proceed with the dissolution and winding up of the partnership firm. Since all those aspects can be considered only by the Court and not by the learned Arbitrator, on this ground also the award is liable to be set aside.

4.20 Further, he would contend that the Arbitral Tribunal had



O.P.No.40 of 2019, etc., batch

WEB COPY

proceeded as if the 2nd claimant had waived his right of making objection about the jurisdiction, since they have participated in the arbitration proceedings. He would contend that the mere participation alone will not amount to waiver of right to bring into the knowledge of this Court about the jurisdiction of the Tribunal in terms of the provisions of the Arbitration and Conciliation Act, 1996. The objection can be raised at any point of time and the same cannot be waived. Further, he would contend that since this is a matter pertaining to right in *Rem*, the Arbitral Tribunal will not have jurisdiction to divide the trademark among the parties. The Arbitrator can pass award only in the matter where the right in *Personam* among the partners that are going to be decided and not in the matter where right in *Rem* is involved. Hence, he prays to set aside the award passed by the Tribunal. In support of his contentions, he would refer to the following judgements:

- (i) ***M.O.H.Uduman and others vs. M.O.H.Aslum*** reported in ***(1991) 1 SCC 412***;
- (ii) ***Booz-Allen & Hamilton Inc vs. SBI Home Finance Limited and others*** reported in ***(2011) 5 SCC 532***;

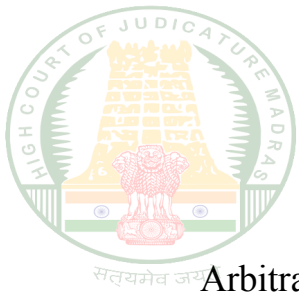


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4.21 Further, he would submit that with regard to all the other aspects, he would adopt the submissions made by Mr.AL.Somayaji, learned Senior counsel appearing for the 2nd claimant.

4.22 Mr.Vijay Narayan, learned Senior counsel appearing for the 1st claimant would submit that the Arbitral Tribunal have discussed about each and every issues, including case laws, very elaborately. However, on the other hand, now the Senior Advocate appearing for the claimants 2 and 3 have once again read the facts of the case and insisting this Court either to appreciate or re-appreciate the evidences and also to substitute the view of the learned Arbitrators. However, in number of cases, the Hon'ble Apex Court had held that if more than one view is permissible in a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, the Courts cannot substitute the other view under the pretext that the said view is better than the view of the



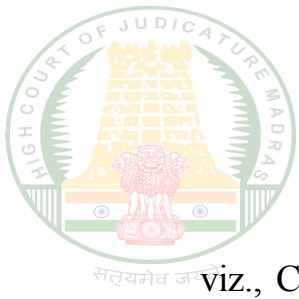
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4.23 Further, he would contend that only in terms of the order passed by the Hon'ble Supreme Court in SLP.No.14417 of 2013 dated 12.09.2013, the Arbitrator dealt with the aspect of dissolution and declared that there is a valid dissolution, consequent to the notice issued by the 5th claimant and the said dissolution will takes place from the date of issuance of notice. Thereafter only, the Tribunal came to the conclusion of distributing the editions of the Dinamalar Newspaper for the betterment of the partners and on the request made by the partners, it has elaborately discussed on all the possibilities based on the valuation report filed by the Auditors. Accordingly, the Arbitrators have applied their minds and distributed the editions among the 5 partners/claimants.

4.24 On the other hand, the claimants 2 and 3 are claiming 4 editions,



O.P.No.40 of 2019, etc., batch

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viz., Chennai, Madurai, Puducherry and Coimbatore editions, as if they are the owners of the editions. As of now, all the editions belongs to the partnership and the partners are entitled to proceed with those editions after settlement of its debts. In the present case, since the Arbitral Tribunal had come to the conclusion that the liquidation of assets of the firm are not beneficial, the claimants 1, 4 and 5 have made a statement before the learned Arbitrator for redistribution of the editions and based on that request only, the Arbitrator appointed a valuer and arrived at the said conclusion taking into consideration of the debtors and creditors of the partnership firm and divided the editions among the partners.

4.25 Taking advantage of the provisions of both the Arbitration and Conciliation Act, 1996 (before amendment of 2015), the award of the Arbitrator is yet to be implemented. Since no Execution Petition is filed, due to the reason of automatic stay in the arbitration proceedings, only the claimants 2 and 3 have been enjoying the 4 major editions which are having



O.P.No.40 of 2019, etc., batch

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firm.

very wide circulation and occupied nearly 70% of the total circulation of the

4.26 He had also referred the citation referred by the learned Senior counsel appearing for the claimants 2 and 3 before the Arbitral Tribunal and before this Court and contend that all those citations are dealt with by the Arbitrator. It is neither that some of the documents have not been taken into consideration by the Tribunal while passing of the award nor that the Tribunal had ignored to consider the law laid down by the Hon'ble Apex Court. Everything has been considered in proper perspective by the Tribunal.

4.27 Under these circumstances, the 3rd claimant again and again reiterating as if they are the owner and they wanted to continue with the 4 editions and further they are coming forward to part with by way of cash to the other partners to compensate. However, the said request had made consistently from the date of initiation of the arbitration proceedings and the



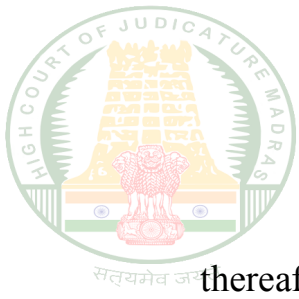
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said request has already been rejected by other partners. Therefore, no useful purpose will be served, by making the said request again and again.

4.28 The learned Senior counsel would also made submission with regard to the liquidation subsequent to the dissolution of the firm. He would contend that the Arbitrator can very well participate in the process of dissolution, since the Auditors have already taken into consideration and got confirmation of some of the debtors and creditors and also disclosed wherever no confirmations were received from the debtors and creditors. Under these circumstances, the interest of the debtors and creditors are not going to be affected, since everything have been taken into consideration while valuing the partnership firm as a going concern. Further, he would contend that a gazette publication was also issued with regard to the dissolution of the firm.

4.29 Further he has also referred Section 48 of the Partnership Act and submitted that the Tribunal had elaborately dealt with all those aspects and



O.P.No.40 of 2019, etc., batch

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thereafter only, they had arrived at final conclusion that the idea of division of editions among the partners would ultimately serve the purpose and retain the glory of the Dinamalar Newspaper, which was started by the father of the 5 claimants. Therefore, he would contend that the Tribunal is certainly empowered to liquidate the assets and distribute the same among the creditors and debtors. Though they have said power, no situation has come in the present case, since they have taken a decision for the distribution of the editions along with the debtors and creditors of the firm based on the valuation report filed by the Chartered Accountant. He has also referred to the following judgements of the Hon'ble Supreme Court in support of his submissions:

- (i) ***Ashok Kumar Malhotra and others vs. Kasturi Lal Malhotra*** reported in ***MANU/PH/0136/2012***;
- (ii) ***J.B.Dadachanji and others vs. Ravinder Narain and others*** reported in ***MANU/DE/0867/2002***;

4.30 By referring the said judgements, he would submit that an



O.P.No.40 of 2019, etc., batch

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Arbitrator is empowered to deal with the dissolution of the firm. On the other hand, in some of the judgements, the winding up proceedings has been mentioned as if they are all not fall within the ambit of the arbitration.

4.31 He would submit that as far as the winding up proceedings mentioned in the orders of the Hon'ble Supreme Court in the judgement referred by the learned counsel for the claimants 2 and 3 is concerned, all those would fall within the meaning of provisions of Companies Act and not within the provisions of Partnership Act. Hence, he would submit that this is the ground, on which the learned Arbitrator had arrived at the said conclusion.

4.32 In reply, Mr.AL.Somayaji, learned Senior counsel appearing for the second claimant would submit that an Arbitrator cannot act as a Liquidator, since the third parties interest are involved in the dispute. He would further contend that even when the settlement of accounts and confirmation of accounts were made by the Auditor of the Firm every year,



O.P.No.40 of 2019, etc., batch

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from a mere perusal of the said confirmation, it appears that some of the debtors and creditors have not provided the confirmation of accounts. When such being the case, the Arbitrator could not have proceeded with these unconfirmed accounts.

4.33 Further, he would submit that the Tribunal went to an extent of dividing the properties. However, in the said award the Tribunal had failed to mention as to how the debtors and creditors of the firm have been settled and it has only mentioned with regard to the valuation. When the particular division is provided to particular person, it is not only based on the valuation of the assets alone but also based on the business of the Firm. Even the Arbitrator themselves had mentioned if it is sold as a running concern, the business would go for several hundred of Crores. When such being the case, dividing the properties only based on the valuation arrived at by the Auditor/Chartered Accountant would be against the interest of the partners, since one edition may have more assets and less circulation and another



O.P.No.40 of 2019, etc., batch

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edition may have more circulation and less assets. Hence, it is improper to allot a particular division to particular person, that too, when the Arbitrator had a knowledge that the value of the Firm will be several hundreds of Crores, if it is sold in the open market.

4.34 He would submit that up to dissolution stage, only the interest of the parties were involved. Further, the Hon'ble Supreme Court had also directed the Tribunal to decide the issue of dissolution, since one of the partners have issued notice of dissolution. Hence, the role of the Arbitrator is to find out whether the notice was issued or not and to decide about the veracity and validity of the notice, which would certainly would comes within the scope of the Partnership deed. After the dissolution is confirmed, the next stage of winding up has to be started and for which the Arbitrator cannot act as Liquidator to liquidate the assets. Hence, he would submit that the award is liable to be set aside in entirety.



O.P.No.40 of 2019, etc., batch

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4.35 Mr.P.S.Raman, learned Senior counsel appearing for the fifth claimant would submit that there are no merits in the contention of the learned Senior counsel appearing for the claimants 2 and 3 that the Tribunal cannot decide the issue pertaining to the use of Trade Mark. He would further submit that the claimants did not seek to enforce any right to undermine the validity, status and condition of the Trademark “Dinamalar”, which would make the dispute as an action in *rem*. The relief claimed was only for the protection and right of usage of the Trademark “Dinamalar” by the family members and the same is in the realm of an action in *personam*. Hence, he would submit that the said claim is arbitrable. He would also submit that certain disputes pertaining to IPR is not a right that emanates from any statutory act but a right that emanates from an partnership deed and the same can be resolved through Arbitration. Hence, he would submit that since the claimants had only sought for the protection and right of usage of the Trademark “Dinamalar” by the family members, the award passed by the Tribunal is sustainable and accordingly, the said award need no interference.

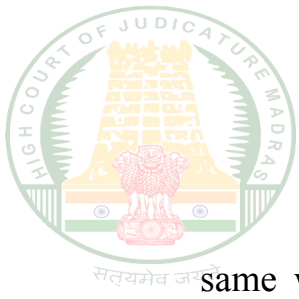


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4.36 With regard to the allotment of edition to the claimant by the Tribunal, the learned Senior counsel would submit that the said allotment was done by the Tribunal after considering the various factors such as equalization of value of editions between the claimants, minimum business dislocation, etc. Further, he would submit that as per the law laid down by the Hon'ble Supreme Court in *Nabha Power Limited vs. Punjab State Power Corporation Limited and another* reported in (2018) 11 SCC 508, the Tribunal had rendered a detailed findings and stated the reasons as to why specific editions were being allotted to each of the claimant. Hence, he would contend that on account of comprehensive findings of Tribunal, the award dated 29.09.2018 need no interference of this Court.

4.37 Further, with regard to the territorial/geographical division of edition, he would submit that the claimants 2 and 3 are estopped from the said pleading, since the issue was never raised before the Tribunal and the

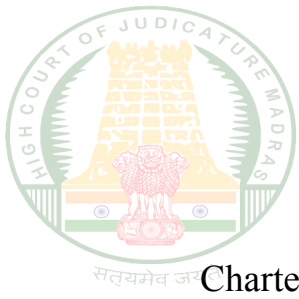


O.P.No.40 of 2019, etc., batch

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same was raised only before this Court as an additional ground after the permissible time limit. He would also submit that Clause 21 of the Partnership Deed dated 23.03.1997 recognises the territorial limitations, since the same stipulates that the partners by consensus can take particular edition of the newspaper with defined territorial rights. Further, he would submit that the said geographical restrictions are permissible and recognised under Section 36(1)(c) and Section 54 of the Partnership Act and the same would not curtail the right of any party to carry on the business. Hence, he would submit that the award is sustainable in this regard and need no interference.

4.38 Further, the learned Senior counsel appearing for the fifth claimant would submit that the fourth claimant had sought for certain reliefs before the Tribunal with regard to the allotment of edition to the partners and further, the fourth claimant had also filed two applications seeking for appointment of an independent Auditor and also for appointment of

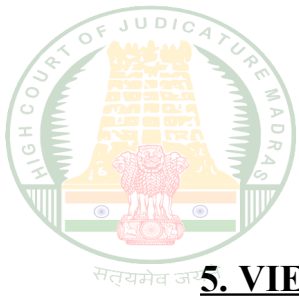


O.P.No.40 of 2019, etc., batch

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Chartered Accountant. However, since there is no oral or documentary evidence pertaining to the alleged fraud in the accounts, the Tribunal had rightly dismissed the aforesaid two applications filed by the fourth claimant. Further, he would contend that the fourth claimant had not sought for any relief pertaining to rendition of accounts in this Court before the commencement of arbitral proceedings. He would also submit that when the fifth claimant had sought for the relief of rendering true and proper accounts against the 2nd and 3rd claimant, after considering the evidence, the Tribunal in its award dated 28.11.2013 had given a finding that all the claimants had access to the balance sheet and accounts of the firm. Hence, he would contend that since the Tribunal had dealt with the issue of settlement of accounts based on the evidence, the award need no interference of this Court.

4.39 Heard the respective learned Senior counsel for the respective parties and perused the materials available on records.



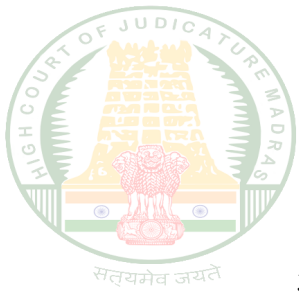
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5. VIEW OF THIS COURT:

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5.1 There are three interim awards under challenge. The first interim award is dated 28.11.2013, the second interim award was passed on 15.03.2014 and the third interim award was passed on 29.09.2018.

5.2 The Tribunal had framed about 45 issues. The first interim award was challenged by the 4th claimant in O.P.No.122 of 2014 and by the claimants 2 and 3 by virtue of O.P.No.350 of 2017. The second interim award was challenged by the 4th claimant by virtue of O.P.No.269 of 2014 and by the claimants 2 and 3 by virtue of O.P.No.391 of 2017. The third interim award was challenged by the 2nd claimant by virtue of O.P.No.863 of 2018 and the 3rd claimant by virtue of O.P.No.864 of 2018 and the 4th claimant by virtue of O.P.No.40 of 2019. Therefore, only the claimants 2, 3 and 4 are the aggrieved parties of the three interim awards passed by the Tribunal. Therefore they have filed their respective original petitions to challenge the same.



O.P.No.40 of 2019, etc., batch

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5.3 Initially the Tribunal had framed the following issues:

1. Is it feasible to divide and separate one-fifth or 20% share in the circulation of the Dinamalar by allocating 1.10 lakhs copies per day of the Dinamalar newspaper by demarcating 16 lakhs urban household to each partner?

2. Is there any resolution between the partners of Use Dinamalar on 25.5.1997 or any other date to divide the editions of Dinamalar or the basis of circulation of Dinamalar newspaper as weighed by claimant No 1 ?

3. Whether any resolution was passed between the partners of Dinamar on 25.5 1997 to let Coimbatore and Erode editan to the 5 and claimant respectively?

4: Whether the first clamars is entitled to Rs 72 crores as claimed by him in his claim statement from claimants 2 and 3 ?

5. Whether the first claimant is entitled to Rs 5.60 crores from the claimants 2 and 3 as claimed by him in his claim statement?

6. Whether Dinamalar newspaper business activities along with publication, printing and editing rights between claimants 2 and 3 together on the one hand and claimants 1, 4 and 5 on the other hand stood severed and each severance was completed on 28.4.2001 as claimed by the claimants 2 and 3 ?

7. Are the editions at Chennai, Madurai, Coimbatore, Puducherry of Dinamalar with name and logo are being run as independent units wholly and exclusively by the claimants 2 and 3 together without division of assets of firm Dinamalar?

8. Whether the claimants 2 and 3 are entitled and continue to possess and run as absolute owners of the editions of Chennai, Puducherry, Madurai and Coimbatore of Dinamalar with all the attendant rights to publish Newspaper under the name Dinamalar with its logo with area of operation as



O.P.No.40 of 2019, etc., batch

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demarcated in item 1 of Schedule of the claim?

9. Whether claimants 1, 4 and 5 should be restrained in any manner from interfering with the rights title and interest of 2nd and 3rd claimants in carrying on publication of Dinamalar of the editions at Chennai. Puducherry, Madurai and Coimbatore either by themselves or along with the legal heirs and successors ?

10. Whether an award should be passed directing an accounting of the assets and liabilities of the Dinamalar firm constituted under the deed of partnership dated 23.3.1997 between the claimants herein be taken as of 28.4.2001 ?

11. Whether valuation of ten individual editions of Dinamalar as a going concern along with the name and logo should be done as of 28.4.2001 and after such valuation whether for one fifth of such values credit should be given to each of the claimants?

12. whether the values of the actions of Chennai Puducherry, Coimbatore and Madurai should be debited in the accounts of the claimants 2 and 3 ?

13. whether the values of the editions of Tirunelveli, Nagercoil, Trichy Vellore, Erode and Salem should be debited in the accounts of the claimants 1, 4 and 5 jointly?

14. Whether after debiting the value of the editions to the respective claimants, the remaining assets should be divided equally?

15 Whether the trademark "Dinamalar" should be protected so that the same is not alienated by any of the claimants to any third parties except to the members of the family of the claimants?

16. Whether on the facts and in the circumstances of the



case it is just and equitable to confirm that the partners of Dinamalar have taken into themselves the editions of Dinamalar in the following manner :

<i>Dr Venkitapathy, 1st Claimant</i> <i>Mr.R.Raghavan, 4th Claimant</i> <i>Mr.Sathyamurthy, 5th Claimant</i>	<i>Editions of Tirunelveli, Nagercoil, Trichy, Vellore, Erode and Salem</i>
<i>Dr.Krishnamurthy, 2nd Claimant</i> <i>Dr.R.Lakshmipathy, 3rd Claimant</i>	<i>Editions of Chennai, Puducherry, Madurai, Coimbatore</i>

17 Whether any scheme should be framed for the management of Dinamalar firm as claimed by the 4th claimant?

18 Whether the claims inter se between claimants 1, 4 and 5 should be decided in the dispute between the claimants herein?

19.Is the 5th claimant entities for a sum of Rs 72.00 crores as claimed by him in his claim statement?

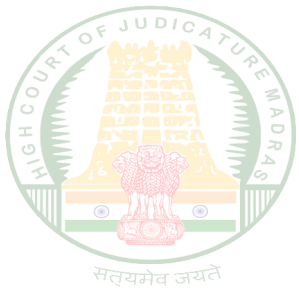
20. is the 5th claimant entitled for a sum of Rs 70.51 crores as claimed by him in para 51 of his claim statement?

21. Whether the claimants 2 and 3 have any rights or interest in the newspaper Kalalkathir

22 Whether there is any truth in the allegation that assets of Dinamalar firm were transferred to the newspaper Kalaikathir ?

23. Whether there is any truth in the allegation that any amount has DOA siphoned off by claimants 2 and 3 to Kalaikathir from Dinamalar firm ?

24. Whether any of newspaper namely Kalaimalar or Kalaikathir published and ran by claimants 2 and 3 as alleged by the claimants 1, 4 and 5?



O.P.No.40 of 2019, etc., batch

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25. *Whether the 4th claimant entitled to cover a sum Rs.1,39,86,000/- from the 5th claimant towards arrears of expenses for running Mercury News Office ?*

26. *Whether the claimant is entitled to recover sum of Rs.1,26,54,000/- from the 1 claimant towards arrears of expenses from running Mercury News Office ?*

27. *Whether the claimant is entitled to recover sum of Rs.3,39,28,912/- from claimants 1 and 3 towards arrears for printing and pinning charges for the various supplements printed at Medavakkam for Tiruchirappalli and Vellore editions of Dinamalar ?*

28. *Whether the 4th claimant noted to recover a sum of Rs.2,25,60,800/- from claimants and towards newsprint charges for Vellore edition to print the supplements?*

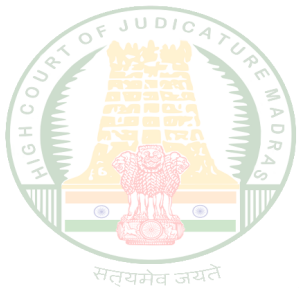
29. *Whether the 4 claimants entitled to recover a sum of Rs.9,90,00,000/- towards cost of newsprint for printing supplementary magazines for Tiruchirapalli edition from claimants 1 and 5?*

30. *Whether the 4 claimant is entitled to recover a sum of Rs.2,42,85,400/- towards loss due to the unilateral reduction of price of Dinamalar from Rs.3/- to Rs 2/- and for the unilateral reduction of the price for the advertisements published in Erode and Salem editions of Dinamalar from claimant No 5 ?*

31. *Whether the 4th claimant is entitled to recover the amounts from claimants 1 and 5 with interest at the rate of 12% per annum?*

32. *Whether an award can be passed by way of an order of mandatory injunction directing the claimants 1 and 5 to pay the 4 claimant the pointing and pinning charges for the various supplements issued along with the Tiruchirapalli and Vellore editions of Dinamalar?*

33. *Whether an award by way of mandatory injunction can be passed against the claimants and 5 directing them to pay*



O.P.No.40 of 2019, etc., batch

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to the 4th claimant the newsprint charges for Vellore and Tiruchirappalli

editions of Dinamalar. For printing the sundlegiants magazines from and out of revenue from the T Nagar Group Advertisement Office?

34. Whether the claimants 1 and 5 can be directed to pay to the 4th claimant the maintenance and establishment expenses for running the Mercury News Office from T-Nagar Group Advertisement office every month?

35. Whether the 4th claimant is entitled to recover every month the advertisement charges from claimants 1 and 5 according to the actual sold and according to the rare card for Tiruchirappalli (include Tanjore) and Vellare editions of Dinamalar ?

36. Whether the 4th claimant is entitled to for an award by way of mandatory injunction against the claimants 1 and 5 to hand over the management of group advertisement office to him?

37. Whether an award can be passed by framing a scheme for the entire management of Dinamalar the partnership firm as claimed by the 4th claimant.

38. In case of partitions whether the Tiruchirappalli, Salem and Erode editions of Dinamalar can be allotted to the share of the 4th claimant?

39. whether the 4 claimant is entitled to recover an equal amount from claimants 2 and 3 as claimed by claimants 1 and 5 from claimants 2 and 3?

40. Whether the respective plaintiffs in the following suits are entitled to the relief prayed for in the respective suits therein?

a.C.S.No.689 of 2001



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O.P.No.40 of 2019, etc., batch

b.C.S.No.737 of 2004

c.C.S.No.22 of 2005.

d.C.S.No.119 of 2005

e.C.S.No.640 of 2005

f.C.S.No.711 of 2002

41. Whether the claimants 2 and 3 are liable for damages and for expulsion, if it is found that the claimants 2 and 3 have used the men, material and the funds of the Dinamalar in connection with the rival newspaper Kalaikathir?

42. Whether the 5th claimant is entitled to have his 20% share of the business of the partnership of Dinamalar in respect of existing all the editions with all the rights without any let or hindrance or interference from the other claimants in running the newspaper Dinamalar in so far as his share is concerned ?

43. Whether the claimant is entitled for permanent injunction restraining the claimants 2 and 3 or any person claiming under them or in connection with them selling or circulating Kalai Kathir or any other Tamil Daily Newspaper in respect of the area of editions which have been allotted to the 5th claimant ?

44. To what relief the parties are entitled to

45. To what relief as to cost.”

5.4 In the first interim award, after discussing elaborately, the Tribunal had passed its award dated 28.11.2013 and the findings of the Tribunal in the said award are as follows:

“39. For all the reasons stated above, the Award is thus passed as follows:

47/183



O.P.No.40 of 2019, etc., batch

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1. The claimants 1 to 5 are not entitled to the reliefs as claimed by them in their respective claim statements covered by issues 1 to 14, 16, 17, 19, 20 and 37 to 43 and the various claims of the respective claimants 1 to 5 covered by the Issues 1 to 14, 16, 17, 19, 20 and 37 to 43 and the suits CS.No.737 of 2004, C.S. 22 of

2005, C.S. 119 of 2005 and C.S. 640 of 2005 on the file of High Court Madras are dismissed. The suits C.5. 489 of 2001 and C.S. 711 of 2002 in the file of High Court, Madras are disposed of with the directions of the Tribunal detailed in para 32.4 of this Award.

2. The claims of the 4 claimant against the claimants 1 and 5, covered by Issues 18 and 25 to 36 are deleted from consideration of this Tribunal in terms of the Memo dated 15.10.2011 filed by the 4 claimant .

3. There will be an award declaring that each of the 5 claimants, as partners of the partnership Firm Dinamalar is entitled to 1/5 Interest in all the assets of M/s Dinamalar partnership firm.

4. The question as to what other reliefs the claimants 1 to 5 are entitled to in this arbitration proceedings and the further question whether the claimants 1 to 5 are entitled to the allotment of edition / editions of Dinamalar newspaper owned by the partnership firm towards their share of interest in the assets of partnership declared in clause 3, will be considered in the next part of the Award wherein as per the order of the Supreme Court of India dated 12.9.2013 in SLP (Civil) 14417 of 2013, the Tribunal will take up the issue as to the dissolution of the Firm

5. The Issue No. 15 regarding Trade Mark "Dinamalar" is left open and it will be considered in the next part of the Award, depending upon the final outcome of the arbitration proceedings.



O.P.No.40 of 2019, etc., batch

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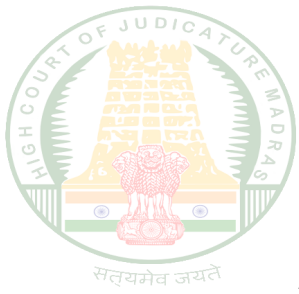
6. The claimants 1 to 5 are directed to bear their respective costs of this proceedings, and

7. Claimants 1 to 5 are directed to continue the present state of affairs with regard to the management of Separate Editions of Dinamalar by Individual partners till the final awards passed in this case.”

5.5 As far as Issue Nos.21 to 24 are concerned, they are all relating to the Issue Nos.19 and 20. In the present case, since the Tribunal had rejected the Issue No.19 and 20, the Issue Nos.21 to 24 also have been rejected by the Tribunal. The Tribunal had framed the above issues based on the various claims made by the parties. At this juncture, the 5th claimant had issued a notice for dissolution of the firm on 27.02.2012 and the same was brought before the Hon'ble Supreme Court in SLP.No.14417 of 2013. After hearing both the parties, the Hon'ble Supreme Court had passed the following order:

“Learned senior counsel appearing for the parties stated that there has been a settlement between the parties and the terms of the settlement are as follows:

(i) The learned Arbitrators are requested to give an award in the matter of arbitration among the partners of Dinamalar (firm) within a period of three months from today in



O.P.No.40 of 2019, etc., batch

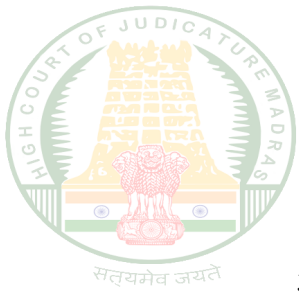
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respect of the 45 issues framed by the proceedings of the Arbitral Tribunal dated 18.07.2007.

(ii) After passing of the aforesaid award mentioned in Para 1 (above) the same learned Arbitrators will take up the issue as to the dissolution of the firm and decide it as per the procedure evolved by them within 2 months thereafter.

(iii) The learned Arbitrators may also be requested to consider a lump sum fee for the arbitration referred to in Para 2 (above) ”

5.6 In the said order, the Hon'ble Supreme Court had directed the Tribunal to decide the 45 issues first, which were framed by virtue of the proceedings of the Tribunal dated 18.07.2007. Accordingly, all the 45 issues were decided by the Tribunal while passing the first interim award dated 28.11.2013. The Hon'ble Supreme Court further directed the Tribunal to take up the issues pertaining to the dissolution of the firm after deciding the 45 issues and to decide the same by the procedure evolved by them within a period of two months thereafter. Accordingly the said issue of dissolution was taken up for hearing and considered while passing the second interim award dated 15.03.2014.



O.P.No.40 of 2019, etc., batch

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5.7 After elaborate discussion, the Tribunal had come to the conclusion and declared that the firm is dissolved with effect from 27.02.2012. Against the said 2nd interim award also, the claimants 2, 3 and 4 have filed original petitions before this Court. The main grievance of the claimants 2 and 3 is that an Arbitrator will not have any jurisdiction to decide the dissolution as well as winding up of the partnership firm.

5.8 As far as the 4th claimant is concerned, he is mainly questioning about the failure of the Tribunal to consider the request to order for rendition of the accounts from the year 1997-98 to the date of issuance of the dissolution notice i.e., 27.02.2012. Both the contentions of the 4th claimant and the claimants 2 and 3 were rejected by the Tribunal and further it was declared that the firm has been dissolved with effect from 27.02.2012. The 4th claimant has been receiving his share of profit continuously without any demur until the date of issue of dissolution notice by the 5th claimant on 27.02.2012. The 4th claimant had not at all raised the issue with regard to the

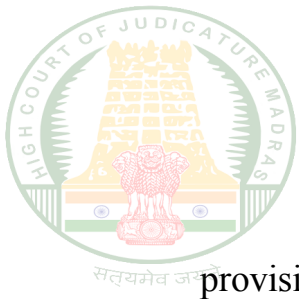


O.P.No.40 of 2019, etc., batch

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accounts at any point of time except in the present case. Those accounts were audited by the Chartered Accountant and after acceptance of the audit without any demur, he received his share of profits every year. Thus, the accounts were concluded. Though the 4th claimant made a submission that all the frauds have come to his knowledge recently, except more statement of this nature, no evidence has been produced. Further, he cannot say that all the alleged fraud he has come to know recently, when his version of arguments was that each balance sheet that he refused to sign, since he had objection from 2000 – 01 to till the date of issue of dissolution notice, which means, he had knowledge since 2000, but failed to take any legal action. Thus, he cannot have any excuse, to order for rendition of accounts, which was already audited and settled. The Tribunal has rightly considered all these aspects and passed the award. Therefore, the concluded accounts cannot be reopened and hence, the plea of the 4th claimant was rightly rejected.

5.9 In the third award, the Tribunal had decided the issue of winding up of the firm and thereby attempted to settle the accounts in terms of



O.P.No.40 of 2019, etc., batch

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provisions of Section 48 of the Partnership Act, 1932 and held that the 10 editions have been distributed among the partners of the firm based on the audit report provided by the Chartered Accountant. The claimants 2, 3 and 4 have challenged before this Court to set aside all the three interim awards on the ground that the Tribunal will have no power for winding up of the firm and an Arbitrator cannot act as a Liquidator and further, they cannot act as *amiable compositeur* without the consent of all the parties in unison.

5.10 Further, they have also challenged in the present case that the award passed by the Tribunal is beyond the scope of partnership deed and the provisions of Partnership Act and would contend that the Arbitral Tribunal had distributed the editions among the parties, which is totally against the provisions of Partnership Act and the Tribunal had applied the equity, fairness and conscience when the partnership deed do not provide any method of such winding up of the affairs of the firm. As far as 4th claimant is concerned, as stated above, he has requested to consider about the failure on



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the part of the Tribunal to consider his request for rendition of accounts from the year 1997 till the date of issuance of dissolution notice. After hearing all the parties, the Tribunal had distributed the 10 editions among the claimants/partners and also passed the appropriate orders with regard to the use of Trademark “Dinamalar” by virtue of third award dated 29.09.2018, which reads as follows:

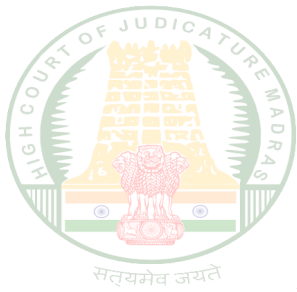
25. For the reasons stated above, THE INTERIM AWARD regarding the allotment of edition / editions of Dinamalar newspaper among the Claimants with consequential directions as well as the allotment of 11:57 cents of land in Thatchanallur in Tirunelveli and undivided extents of land in Medavakkam to Claimants 1, 2, 3, 5 and Claimants 6 to 8 is passed as under:-

(1) The 1st Claimant (Dr R Venkitapathi) is allotted the following editions towards his 20% share in the enterprise value of the dissolved Firm Dinamalar:

1	Tirunelveli
2	Nagercoil
3	Erode
4	Salem

The 1st Claimant is entitled to carry on the business connected with Tirunelveli, Nagercoil, Erode and Salem editions of Dinamalar newspaper with its Trade Mark and Goodwill within the territorial / geographical area covered by the Revenue districts of Tirunelveli, Thoothukudi, Kanyakumari, Erode, Salem, Namakkal, Dharmapuri and Krishnagiri.

(2) The 2 and 3 Claimants Dr.R.Krishnamurthy and



O.P.No.40 of 2019, etc., batch

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Dr.R.Lakshmipathi are jointly allotted the following editions towards their 40% share in the enterprise value of the dissolved Firm Dinamalar:

1. Madurai
2. Chennai and
3. Vellore

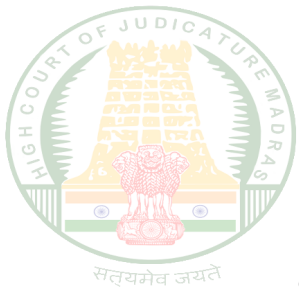
The Claimants 2 and 3 are jointly entitled to carry on the business connected with Madurai, Chennai and Vellore editions of Dinamalar newspaper with its Trade Mark and Goodwill within the territorial / geographical area covered by Revenue Districts of Madurai, Dindigul, Theni, Sivaganga, Virudunagar, Ramanathapuram, Chennai, Tiruvallur, Kancheepuram, Vellore, and Tiruvannamalai.

Claimants 6 to 8 the LRs of the deceased 4th Claimant Mr R Raghavan, are jointly allotted the following editions towards their 20% share in the Enterprise Value of the dissolved Firm Dinamalar:

1. Tiruchirappalli
2. Pondicherry edition

The Claimants 6 to 8 are jointly entitled to carry on the business connected with Tiruchirappalli and Pondicherry editions of Dinamalar newspaper with its Trade Mark and Goodwill within the territorial / geographical area covered by the Revenue districts of Tiruchirappalli, Karur, Perambalur, Ariyalur, Thanjavur, Nagapattinam, Pudukottai, Tiruvarur, Karaikal and Pondicherry, Villupuram and Cuddalore.

(4) Claimant No 5 (Mr R Sathlamurthy) is allotted the Coimbatore edition towards his 20% share in the enterprise value of the dissolved Firm Dinmalar. The 5th Claimant is



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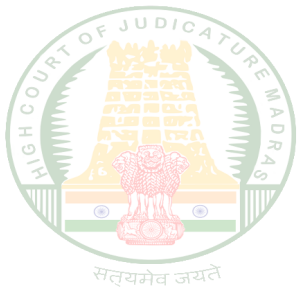


O.P.No.40 of 2019, etc., batch

entitled to carry on the business connected with Coimbatore edition of Dinamalar newspaper with its Trade Mark and Goodwill within the territorial / geographical area covered by the revenue districts of Coimbatore, Tiruppur and Nilgiris.

(5) Since the Trade Mark is registered in the name of Claimants 1 to 3, 5 and the deceased 4th Claimant, the Claimants 1, 2, 3, 5 and Claimants 6 to 8 together has an equal right to use in the Trade Mark and entitled to carry on the business in connection with the edition / editions of Dinamalar newspaper in the areas allotted to them by this Award with its Trade Mark and Goodwill. The Claimant who is allotted the particular Edition/Editions is under an obligation of pre-fixing, or suffixing the area along with the registered Trade Mark Dinamalar e.g Chennai Dinamalar or Dinamalar Chennai. Consequently, each Claimant will be entitled to apply afresh for such Trade Mark with the Registrar of Trade Marks and the remaining Claimants shall have no objection to such registration of the Trade Mark. The new Trade Marks may be associated with the already registered Trade Mark. No Claimant shall be entitled to use the Trade Mark Dinamalar without the authorized prefix / suffix as the case may be. All Editions shall be entitled to use the device of Lotus and the characteristic font for the mark Dinamalar. Editions shall also be entitled to use the pictorial photographic representation of the Founder, the late Sri Ramasubbaiyer in the mast head or elsewhere in the Edition. Similarly, all columns, magazines, supplements and articles with a defined trade mark shall be associated with the respective edition by addition of the suffix /prefix. The Claimants allotted with the respective editions shall refrain from extending the use of the Trade mark beyond the territories / geographical area allocated to each allotted edition.

(6) Fresh Declarations under Section 4 of the Press & Registration of Books Act, 1867 in respect of the allotted editions, shall be obtained for the editions allocated and indicating the change in Ownership, editor and Printer.



O.P.No.40 of 2019, etc., batch

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(7) *The Claimants shall file application before the concerned Labour Commissioner for change of Manager under the Factories Act.*

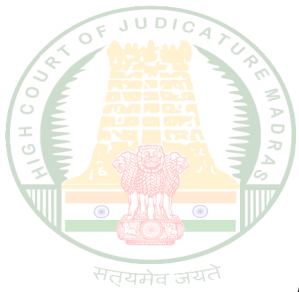
(8) *The Claimants allocated premises with electricity connection standing in the name of Dinamalar Firm shall ensure that the change is made into the name of the respective Claimant to whom the Edition is allotted by requisitioning the concerned Authorities to effect such change of name.*

(9) *The Claimant allocated land / factory shall apply to the revenue authorities to have the same altered / mutated in the revenue records, as also the building tax assessment and records with the concerned Panchayat / Corporation or Municipality.*

(10) *The Claimants shall be at liberty to associate / agglomerate editions for the purpose of determining circulation by private contract and register with the ABC accordingly.*

(11) *The Claimants shall be in the event of requirement of NOC or 'Letter of No Objection', offer the same to ensure speedy transfer / change as the case may be.*

(12) *All residual rights of the parties in respect of e-newspaper, domain rights, and any future right pertaining to intellectual property shall vest in the respective Claimants and /o the associate / agglomerate editions allotted to the respective Claimant. Domain name registration shall be applied by the respective Claimant for the edition with the prefix / suffix or in the case of associate / agglomerate editions combining to release an e-newspaper, such name that is distinctively distinguishable shall be employed. All SMS alerts / news through mobile phones, etc shall distinctly carry the edition suffix / prefix. All circulation out of Tamilnadu shall be in respect of the concerned edition and parties may commence circulation in other towns / cities in respect of the concerned edition as*



O.P.No.40 of 2019, etc., batch

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published at the edition-centre. Editions shall be entitled to fix and renew their advertisement tariffs from time to time.

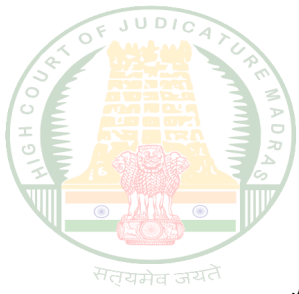
(13) The present website i.e. www.dinamalar.com and mobile app should be closed and 5 separate domain names with the prefix or suffix Dinamalar shall be used by the Claimants In respect of the editions allotted to each of the Claimant.

(14) After the apportionment of the business under this Award each Claimant shall not interfere with the function of the other Claimant's business.

(15) Each Claimant shall not compete with the business of the other Claimants in the territories / geographical area in which each of the Claimants are carrying on business as per this Award.

(16) The Claimants shall execute necessary documents, declaration etc. before any Authority, if found necessary to give effect to this Award.

(17) The Edition/Editions of Dinamalar are allotted to each of the Claimants, by this Award from the date of Award. Therefore, the Claimant to whom the Edition/Editions of Dinamalar are allotted is the owner of that Edition / Editions, including the building, Plant and Machinery, Furniture, etc. owned by Dinamalar, as per the details given in the Valuation Reports of M/s Velu Associates dated 28.5.2015 and the updated Report dated 29.6.2016, from the date of the Award and the Claimants who have to vacate the Edition / Editions must vacate and handover the Edition/Editions to the party who is allotted that particular Edition/Editions within 3 months from the date of this Interim Award. Therefore the Claimants 2 and 3 shall vacate and handover Coimbatore Edition including the building, Plant and Machinery, Furniture etc. owned by Dinamalar to the 5 Claimant and Pondicherry Edition including building, Plant and Machinery, Furniture, etc. to Claimants 6 to 8 within 3 months



O.P.No.40 of 2019, etc., batch

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from the date of this Interim Award. Similarly, the 5th Claimant shall vacate and handover Erode and Salem Editions including the building, Plant and Machinery, Furniture etc. owned by Dinamalar to the 1st Claimant and Claimants 6 to 8 shall hand over Vellore Edition including the building, Plant and Machinery, Furniture etc. owned by Dinamalar to the Claimants 2 and 3 within 3 months from the date of this Interim Award.

(18) Claimants 1, 5 and 6 to 8 are directed to remove within 3 months from the date of Award the machinery for printing the magazines and vacate the portion of the building in Medavakkam land, where the machinery for printing the magazines are fixed.

(19) All the parties are directed to execute such writing or documents and do all such acts as are required for the purpose of having editions of Dinamalar mutated into the names of Claimants who are allotted the said Edition / Editions of Dinamalar.

(20) Allotment of Thatchanallur land in Tirunelveli and undivided extent of land in Medavakkam :

1. The land measuring 11.57 cents in Thatchanallur in Tirunelveli is allotted to the 1 Claimant Dr R Venkitapathy. An undivided extent of 67,782 sq.ft of land in Medavakkam is allotted to the 1st Claimant Dr R Venkitapathy. An undivided extent of 31,425 sq.ft of land in Medavakkam is jointly allotted to the 2nd Claimant Dr R Krishnamurthy, and the Claimant Dr R Lakshmipathi. In addition, Claimants 2 and 3 are jointly allotted a specific portion of 20,000 sq.ft of Medavakkam land, over which building / structures measuring 13,258 sq.ft stands for the convenient enjoyment of the building and structures measuring 13258 sq.ft which is allotted to Claimants 2 and 3 along with the Chennai edition of Dinamalar. An undivided extent of 42,873 sq.ft of land in Medavakkam is allotted jointly to Claimants 6 to 8, who are the LRS of 4th Claimant since deceased.



O.P.No.40 of 2019, etc., batch

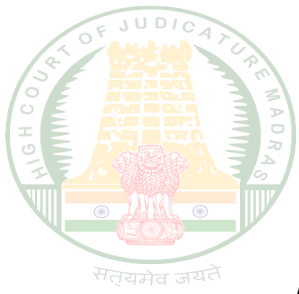
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vi. *An undivided extent of 45,699 sq.ft of land in Medavakkam is allotted to the 5th Claimant (Mr R Sathiamurthy)*

(21) Since the Claimants 1, 2, 3, 5 and 6 to 8 are allotted an undivided extent of land in the Medavakkam as stated in para 20 (ii), (iii), (v) and (vi) supra, they will be in joint possession of the same as joint owners. The Claimants may choose to continue in joint possession of the same as joint owners: The Claimants have also the right to seek the partition of the undivided extent of land allotted to them, by metes and bounds, and allotment of specific portions with specific boundaries in the land in Medavakkam to enable them to take possession of the specific portions of land so allotted.

(22) For partitioning the undivided extent of land allotted to Claimants 1 to 3, 5 and 6 to 8, by metes and bounds and for giving separate possession of specific portions of lands to Claimants to which they are entitled, with specific boundaries, it is necessary for the Tribunal to appoint a Commissioner with directions to measure the undivided portion of land with the help of a Surveyor, divide the undivided portion by metes and bounds and file a Report before the Tribunal suggesting the modes of allotment of specific portions of land to the Claimants as per their entitlement. The Tribunal, after the receipt of the report of the Commissioner will have to hear the objections of the parties to the Commissioner's report and proceed thereafter to pass the Award allotting specific portions of land with fixed boundaries to each of the sharers to enable them to take separate possession of the specific extents of land so allotted to them in Medavakkam.

(23) Since the appointment of a Commissioner and getting the report of a Commissioner, hearing the objections of the parties to the report of the Commissioner and decide about the allotment of specific extent of lands to the Claimants by the Tribunal will necessarily take considerable time, in our view, the



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O.P.No.40 of 2019, etc., batch

*passing of the Award regarding allotment of editions of Dinamalar newspaper, and undivided extent of land in Medavakkam, as well as the 11.57 cents of land in Thatchanallur in Tirunelveli to the Claimants, in respect of which we have finally determined the rights of parties, need not wait till then, and therefore we are passing the Interim Award, regarding the allotment of editions of the Dinarralar newspaper, and 11.57 cents of land in Thatchanallur as well as the undivided extent of land in Medavakkam among the Claimants, relegating the consideration of the issues relating to the appointment of Commissioner, getting his report and allotment of specific portions of land in Medavakkam to the Claimants, to the next stage of the Arbitration proceedings which is to be continued after passing this Interim Award on the application of any one of the Claimants, seeking appointment of Commissioner for the purposes, stated above. We make it clear that in so far as the allotment of editions of Dinamalar Newspaper as well as the undivided extent of land in Medavakkam and 11.57 cents in Thatchanallur in Tirunelveli to the Claimants which are matters covered by paras 25 (1) to para 25 (20 f. to vi.) supra are concerned, this Award is final and is intended to finally determine the rights of parties. It is, however, also made clear that as regards the partition of the undivided extent of land allotted to the Claimants herein, in the event of the parties desiring the division by metes and bounds and allotment of specific portions with specific boundaries in the land at Medavakkam as stated in para (22) supra, this Award, to that extent alone shall be treated as Award made at interim stage in terms of Sec 31 (6) of the Arbitration and Conciliation Act 1996, as held in paras 68, 69 and 70 of the decision of Supreme Court reported in (2006) 11 SCC page 181 in the case *Mc Dermott International Inc Vs Burn Standard Co.*, thereby relegating the parties to the next stage of the proceedings to be continued on the application of any one of the parties seeking appointment of Commissioner for the purposes as stated above.*



O.P.No.40 of 2019, etc., batch

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5.11 Since the 5th claimant had issued the dissolution notice on 27.02.2012, the various suits, which were filed among the parties with regard to the right over particular edition of the newspaper, the prayers in the suit almost become infructuous, as they have been set out as in the course of running up of the partnership firm. However, as per the order of the Hon'ble Supreme Court, now the Tribunal has to decide about the 45 issues and thereafter the issue of dissolution in accordance with law. As far as 45 issues are concerned, except the issue No.15 which is pertaining to the Trademark, all the other issues have been rejected by the Tribunal for the reasons assigned therein. The dissolution notice was issued and the same had been declared as valid, hence, there will be no significance since those 45 issues except the issue pertaining to the Trademark are relating with regard to the running of the firm which are all come to an end upon the issue of dissolution notice.



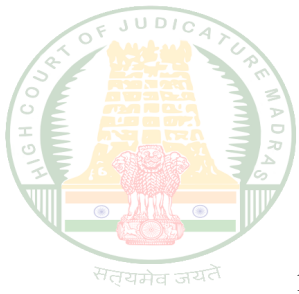
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5.12 Upon hearing and the perusal of the materials available on record, though very many arguments were made by the respective learned Senior counsel on facts as well as under Section 34 of the Arbitration and Conciliation Act, this Court is inclined to consider only the aspects, which are relevant with regard to the issues which are all comes under the purview of Section 34 of the Arbitration and Conciliation Act and hence, accordingly, the submission made by the respective learned Senior counsel is taken into consideration and dealt with. For the purpose of deciding this case, this Court framed the following issues, which are all based on the submissions made by the respective learned Senior counsel for the respective parties:

(i) Whether the dissolution of the partnership firm can be made by its partners “at will” in terms of the Partnership deed dated 23.03.1997?

(ii) Whether the Arbitral Tribunal have jurisdiction to adjudicate the issue of dissolution of firm in terms of the provisions of Partnership deed? If so, whether the second interim award passed by the Arbitral Tribunal, declaring the partnership firm as dissolved with effect from 27.02.2012, is



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O.P.No.40 of 2019, etc., batch

in accordance with the agreed terms and conditions of the partnership deed dated 23.03.1997?

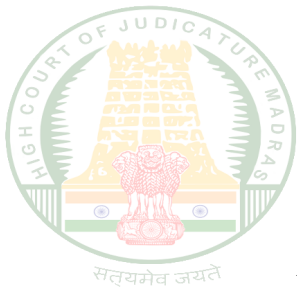
(iii) Is winding up of the partnership firm, the same as dissolution of the partnership firm?

(iv) Whether the winding up of the partnership firm amounts to liquidation of the partnership firm? If so, whether the Arbitral Tribunal can deal with the issue of winding up and act as Liquidator to liquidate the assets and liabilities of the partnership firm?

(v) Whether the Tribunal can adjudicate the interest/claim of the third parties in the arbitration proceeding in the absence of any agreement with the third parties?

(vi) Whether the Tribunal can adopt the method and decide on their own in equities, fairness and conscience when the partnership deed do not provide the method of winding up nor any other agreement between the parties to permit the Tribunal to act as *amiable compositor* by following a method of winding up and distribution of assets of its own choice and on equity?

(vii) Whether the settlement of accounts of the firm from the year 1997-98 to 2010-11 is in accordance with the



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O.P.No.40 of 2019, etc., batch

partnership deed and as per the provisions of Partnership Act?

(viii) Whether the goodwill of the firm, trademark and brand name of “Dinamalar” was valued in terms of the provisions of Section 55 of the Partnership Act or subject to contract, if any, between the parties, after the dissolution of the firm for the purpose of winding up of the affairs of the firm and for the settlement of accounts among the parties?

(ix) Whether the settlement of accounts had been arrived by the Arbitral Tribunal in terms of Section 48 of the Partnership Act read with Partnership deed dated 23.03.1997 ?

(x) Whether all the three interim awards of the Tribunal is liable to be set aside in terms of the provisions of Section 34 of the Arbitration and Conciliation Act, 1996?

(xi) Whether the Civil Suit Nos.600 of 2016 and 939 of 2016 are maintainable, in view of the decisions arrived in these Section 34 original petitions?

6. ANSWERS TO THE ISSUES:

6.1 Issue No.I:-

Whether the dissolution of the partnership firm can be made by its

65/183



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partners “at will” in terms of the Partnership deed dated 23.03.1997?

6.1.1 Section 43 of the Partnership Act, 1932 deals with the issue of dissolution of the firm “at will”, which reads as follows:

Section 43:- DISSOLUTION BY NOTICE OF PARTNERSHIP AT WILL.

(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

6.1.2 A reading of the above Section makes it clear that if a partnership firm was formed with a Clause that the partnership is “at will”, the same can be dissolved even at the instance of any of the partners “at will”. Now let me examine whether the Partnership deed contains the relevant Clause for dissolution of partnership “at will” or not.

6.1.3 Clause 4 of the Partnership deed dated 23.03.1997 deals with the dissolution of partnership “one at will”, the said clause is extracted hereunder:



O.P.No.40 of 2019, etc., batch

“4. The partnership shall be "One at Will".”

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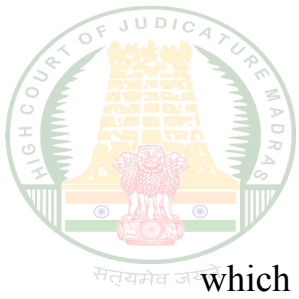
6.1.4 A reading of the above Clause makes it clear that the partnership can be dissolved by anyone of the partner “at will”. Therefore in the present case, the partnership among the partners can be dissolved “one at will” in terms of Clause 4 of the Partnership deed read with Section 43 of the Partnership Act, 1932. Accordingly, the Issue No.I is answered.

6.2 Issue No.II:-

Whether the Arbitral Tribunal has jurisdiction to adjudicate the issue of dissolution of firm in terms of the provisions of Partnership deed? If so, whether the second interim award passed by the Arbitral Tribunal, declaring the partnership firm as dissolved with effect from 27.02.2012, is in accordance with the agreed terms and conditions of the partnership deed dated 23.03.1997?

6.2.1 The dissolution of the partnership firm is an issue among its partners. The nature of right that is going to be decided in the process of declaration of dissolution of the partnership firm is only a right in *personam*,

67/183



O.P.No.40 of 2019, etc., batch

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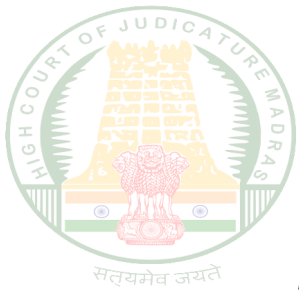
which is nothing but the rights of the partners of the partnership firm. The Tribunal is only going to decide the rights of the partners to dissolve the partnership firm in terms of the provisions of the partnership deed. Therefore, the Tribunal is not going to traverse anything beyond the provisions of the partnership deed. If the Tribunal is going to decide any right only within the provisions of terms and conditions of the partnership deed, there is no embargo for the Tribunal to decide the said issue of declaration of the dissolution of the partnership firm.

6.2.2 Now let me analyse whether the Tribunal has made the declaration of dissolution in accordance with the provisions of the partnership deed. To decide the said aspect, it would be just and necessary to peruse the notice issued by the 5th claimant for dissolution of the partnership firm, which is extracted hereunder:

NOTICE OF DISSOLUTION OF PARTNERSHIP FIRM M/S_
DINAMALAR
UNDER SECTION 43 OF INDIAN PARTNERSHIP ACT, _
1932 (AS AMENDED)

From

68/183



O.P.No.40 of 2019, etc., batch

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*Satyamurthy,
G-9, Barn Paradise Apartment,
109, G.N. Chetty Road
T.Nagar, Chennai-600017*

To

*1) Dr. R. Venkatapathy,
G-9, Parsn Paradise Apartment,
109, G.N. Chetty Road, T.Nagar, Chennai-600 017*

*2) Mr. R.Krishnamurthy,
34, Second Main Road,
Chennai-600 028*

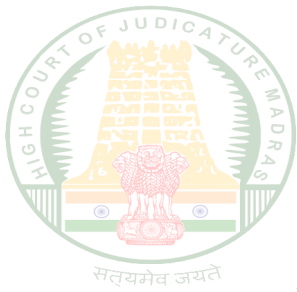
*3) Mr. R. Lakshmipathy,
Keerthana Flats, Raja Annamalaipuram,
No 5, SreeramSathy Sal Nagar,
Madural- 625 003*

*4) Mr. R.Raghavan, M/s Dinamalar,
Mercury Apartment,
42-A, Pantheon Road, Egmore, Chennai-600 008*

Sub: Dissolution notice issued under Section 43 of Indian Partnership Act, 1932 (as amended) regarding the Registered Firm M/s Dinamalar (with the Registrar of Firms, Madras North, originally as 78 of 1961, Chennai North District), a partnership at will, by Shri R. Sathiyamurthy, with effect from 27.02.2012

Ref: Partnership deed dated 23.03.1997 entered into among the above said four partners with that of the undersigned.

1) Whereas 1, R.Sathiyamurthy, S/o late Shri Ramasubbalyer, along with Dr. R. Venkatapathy, Mr. R.Krishnamurthy, Mr. R. Lakshmipathy and Mr. R.Raghavan, all sons of Late Shri Ramsubbalyer, are carrying on the business in partnership In the running of Newspaper and allied weekly supplements and yearly magazines under the name and style of



O.P.No.40 of 2019, etc., batch

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M/s Dinamalar, in accordance with the deed of partnership cod 23.03.1997 registered as Dinamalar (with the Registrar of Firms, Madras North, originally as 78 of 1961, Chennai North District)

2) The partnership is one at will as understood in Indian partnership Act, under clause 4 of the above said Partnership deed dated 23.03.1997.

3) Since there is no mutual trust among the partners and it is no longer possible to carry on the above Partnership business as a partnership concern and therefore, I, as a partner, have come

to a final conclusion to dissolve/determine the partnership. In pursuance of the unequivocal and final intention to dissolve the said partnership, I issue this notice of dissolution as understood under Section 43 of Indian Partnership Act, 1962, (as amended).

4) I, R.Sathiyamurthy, S/o late Shri Ramasubbaiyer, hereby give this notice of dissolution of the above said partnership M/s Dinamalar, mentioned in paragraph 1 above with effect from 27.02.2012 and hereby express my final, exclusive and unequivocal Intention to dissolve the firm as understood under section 43 of Indian Partnership Act, 1932, read with clause 4 of the above said partnership deed dated 23.03.1997 to the remaining 4 partners, jointly and severally viz: Dr.Venkatapaty, Mr. R.Krishnamurthy, Mr. R. Lakshmipathi and Mr. R.Raghavan. Please take notice accordingly.

5) I am also intimating the notice of dissolution and the factum of dissolution of firm with effect from 27.02.2012 to the Registrar of partnership firm having jurisdiction as per law.

6.2.3 A perusal of the above notice reveals that the 5th claimant had



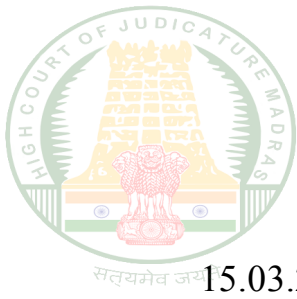
O.P.No.40 of 2019, etc., batch

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issued a notice of dissolution on 27.02.2012 to dissolve the partnership firm in terms of Clause 4 of the partnership deed. Any partner can issue a notice to dissolve the partnership firm one at will by invoking the provisions of said Clause 4 of the partnership deed.

6.2.4 Under these circumstances, the present dispute among the partners reached to the Hon'ble Supreme Court of India in SLP.No.14417 of 2013 and the Hon'ble Supreme Court vide its order dated 12.09.2013 had directed the Tribunal to decide the 45 issues, which were framed on 18.07.2007 at first instance and thereafter, directed the Tribunal to take up the issue with regard to the dissolution of the partnership firm and decide the same as per the procedure evolved by them within a period of 2 months. Accordingly, the Tribunal had decided the said 45 issues and thereafter taken up the issue of dissolution and passed the second interim award dated

71/183



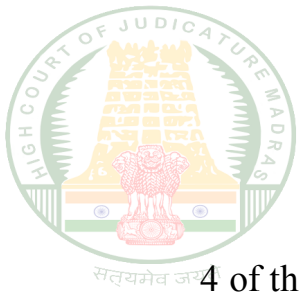
O.P.No.40 of 2019, etc., batch

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15.03.2014, whereby it was declared that Dinamalar, which was formed as a partnership firm at will, stands dissolved with effect from 27.02.2012.

6.2.5 The learned Senior counsel appearing for the claimants 2 and 3 have made an extensive submission that the Tribunal will not have any power to adjudicate the issues pertaining to dissolution and winding up of the partnership firm. As stated above, in the present case, the Hon'ble Supreme Court had directed the Tribunal to decide the dissolution of the firm in accordance with law. Further Section 43 of the Partnership Act, 1932 as well as Clause 4 of the Partnership deed dated 23.03.1997 had clearly provides that the partnership is “one at will”. Therefore, the dispute that has to be decided in the present case is only pertaining to whether there is a valid notice of dissolution, if so, whether the partnership was dissolved “one at will”?

6.2.6 In the present case, 5th claimant issued a dissolution notice dated 27.02.2012 to dissolve the partnership firm with effect from the same date. As discussed above, the partnership firm can be dissolved one at will. Clause



O.P.No.40 of 2019, etc., batch

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4 of the partnership deed enables any partners to issue notice of dissolution at will. As per the provisions of Section 43 of the Partnership Act, 1932 also the partnership can be dissolved at will. The Hon'ble Supreme Court also directed the Arbitral Tribunal by virtue of its order dated 12.09.2013 in SLP.No.14417 of 2013 to decide the issue of dissolution. A conjoint reading of the notice of the 5th claimant, Clause 4 of the partnership deed and Section 43 of the Partnership Act makes it clear that the partnership firm can be dissolved by any of the partners at will. In the present case, the notice was issued in compliance of Clause 4 of the partnership deed. The Hon'ble Supreme Court in its order has directed the Arbitral Tribunal to decide the issue of dissolution. The Tribunal had also went through and decided and declared that the partnership firm is dissolved at will with effect from 27.02.2012. As discussed above, the parties to the dissolution are only the five partners and their legal representatives. The partnership deed provides for the dissolution at will. The rights to be decided in the present case is only the rights of the partners in terms of the partnership deed. Hence, only the Tribunal can very well decide the rights of the partners within the scope of the



O.P.No.40 of 2019, etc., batch

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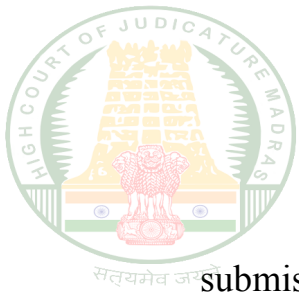
partnership deed. Since no third parties interest were involved in the process of declaration of dissolution of partnership firm by the Arbitral Tribunal, this Court is of the considered view that there is no legal impediment for the Arbitral Tribunal to adjudicate the issue of dissolution of the firm.

6.2.7 As discussed above, the partnership deed itself enables the partners to issue the notice of dissolution of the partnership firm at will. Therefore, the Arbitral Tribunal made a declaration of the dissolution of the firm only in accordance with the terms and conditions as agreed by the partners in the partnership deed. Accordingly this issue II is answered.

6.3 Issue No.III:-

Is winding up of the partnership firm, the same as dissolution of the partnership firm?

6.3.1 The contentions of the learned Senior counsel who has appeared for the claimants 2 and 3 was that the Tribunal cannot decide the issue of dissolution as well as the winding up of the partnership firm. As far as the



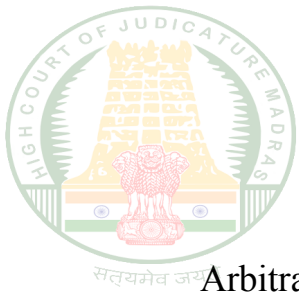
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submission of the learned Senior counsel with the regard to dissolution is concerned, while answering the Issue No.2, this Court held that the Tribunal have jurisdiction to decide the issue of dissolution. The issue further raised was that the Tribunal cannot wound up the partnership firm subsequent to the declaration of dissolution of the partnership firm.

6.3.2 This Court had already answered to the issue with regard to whether the Tribunal can decide the issue of dissolution and held that in the present case, the dissolution of the firm is well within the jurisdiction of the Tribunal. Now the issue is pertaining to the winding up of the partnership firm.

6.3.3 As stated above, in the course of deciding the issue pertaining to declaration of the dissolution by the Tribunal, the parties involved in the process of declaration of dissolution of the partnership firm are only the partners of the firm. Thus, the right of the partners only going to be decided in the process of declaration of dissolution of the partnership firm by the



O.P.No.40 of 2019, etc., batch

Arbitral Tribunal.

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6.3.4 On the other hand, the process of winding up will start, at once when the Arbitral Tribunal declared that the partnership firm is dissolved at 'Will'. To wind up the partnership firm, it is necessary to liquidate the assets and liabilities of the partnership firm. In the process of liquidating the assets and liabilities of the firm, very many third party interest have to be adjudicated by the person, who is going to act as a liquidator or any other the person whatever name to be called, of the dissolved firm. Therefore, in the process of winding up, a liquidator or such other person whatever name to be called has to be appointed. Thereafter, the liquidator / other person has to call for the claims from the third parties such as employees, workers, P.F. claims, statutory and non statutory claims and adjudicate the said claims along with the debtors of the firm as well.

6.3.5 As per Section 48 of the Partnership Act, the payment of the debt to the third parties will get priority. The work of the liquidator etc., will start

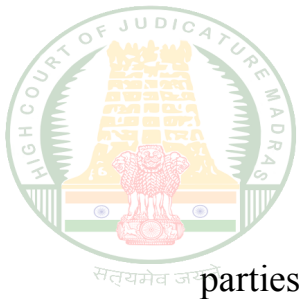


O.P.No.40 of 2019, etc., batch

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with the calling for the claim from third parties, who are all connected with the business of the partnership firm. Thus, in the process of winding up of the firm, the right in *rem* of the public at large has to be decided. The liquidator has to call for the claims and also adjudicate the claims of the debtors and creditors of the Company, which includes statutory and non-statutory claims, Government dues etc. The creditors, debtors and other statutory and non-statutory claims made by the claimants are not a party to the partnership deed.

6.3.6 In the course of dissolution, the rights of the parties that are going to be decided is the right in *personam* and subordinate right of *personam* that would arise from the right in *rem*. In the course of winding up, the rights of the parties that are going to be decided is right in *personam*, the subordinate right of *personam* that would arise from the right in *rem* and also the right in *rem* at large that would arise from the third parties. Hence, the right of the



O.P.No.40 of 2019, etc., batch

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parties that are going to be decided in the course of dissolution and in the course of winding up of the partnership firm is entirely different.

6.3.7 That apart, Section 583 of the Companies Act, 1956 and as well as Section 375 of the Companies Act, 2013 deal with the dissolution of unregistered company. Section 583 (4) (a) of the Companies Act, 1956 deals with 'if the company (Partnership firm) is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding up of affairs', only those companies for the purpose of winding up of affairs, after the dissolution, can invoke the provision of the Companies Act for the purpose of winding up of the partnership firm. A similar provision also available in Section 375 (3) (a) of the Companies Act 2013. A reading of the above provision makes it very clear that the Companies Act deals with only the winding up of the unregistered companies after the completion of the dissolution process in terms of the Partnership deed and the provisions of the Indian Partnership Act. Hence, the dissolution has to be made in accordance with the Partnership deed r/w. Partnership Act. After the dissolution of the



O.P.No.40 of 2019, etc., batch

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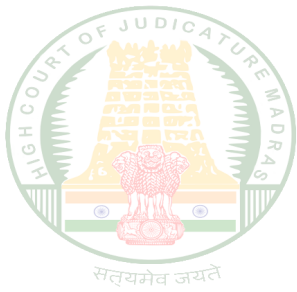
partnership firm, one can approach for winding up in terms of the provisions of the Companies Act or otherwise in terms of the Indian Partnership Act. Therefore, I have no hesitation to hold that the winding up of the partnership firm is not the same as dissolution of the partnership firm.

6.3.8 Accordingly, the Issue No.III is answered.

6.4 Issue No.IV:-

Whether the winding up of the partnership firm amounts to liquidation of the partnership firm? If so, whether the Arbitral Tribunal can deal with the issue of winding up and act as Liquidator to liquidate the assets and liabilities of the partnership firm?

6.4.1 After dissolution of the partnership firm, the next step is winding up of the affairs of the partnership firm. Before dealing with this aspect, this Court feels that it is just and necessary to extract Sections 45, 46, 47 and 48 of the Partnership Act and accordingly, the same is extracted here under:



O.P.No.40 of 2019, etc., batch

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**Section 45 LIABILITY FOR ACTS OF PARTNERS
DONE AFTER DISSOLUTION.**

(1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm, if done before the dissolution, until public notice is given of the dissolution : Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

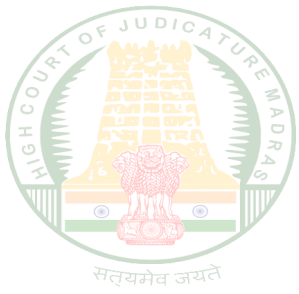
(2) Notices under sub-section (1) may be given by any partner.

**Section 46 RIGHT OF PARTNERS TO HAVE BUSINESS
WOUND UP AFTER DISSOLUTION.**

On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or which representatives according to their rights.

**Section 47 CONTINUING AUTHORITY OF PARTNERS
FOR PURPOSES OF WINDING UP.**

After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise : Provided that the firm is in no case bound by the acts of a partner who had been adjudicated insolvent, but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.



O.P.No.40 of 2019, etc., batch

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Section 48 MODE OF SETTLEMENT OF ACCOUNTS BETWEEN PARTNERS.

In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed :

(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;

(b) the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order :

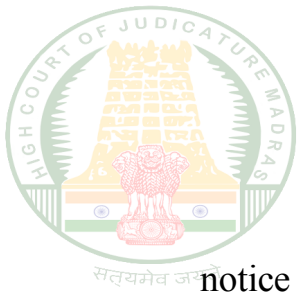
(i) in paying the debts of the firm to third parties;

(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(iii) in paying to each partner rateably what is due to him on account of capital; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

6.4.2 A reading of the provisions of Section 45 of the Partnership Act makes it clear that after dissolution, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before dissolution, until public notice is given of the dissolution. Even after dissolution, the partners are still liable to third parties until the provisions of the notice to the public about the dissolution. This

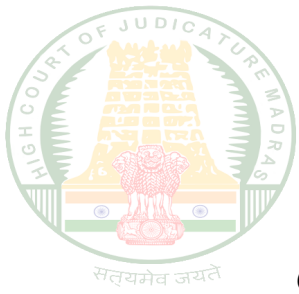


O.P.No.40 of 2019, etc., batch

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notice is just an intimation to public about the dissolution. It is not that by virtue of said notice, the public/stakeholders have to make their claim and the said claim can be made once the liquidator called for claim after the dissolution and in the course of winding up of the partnership firm.

6.4.3 Section 46 of the Partnership Act, which deals with dissolution of the partnership firm, states that every partner or his representatives is entitled, as against all the other partners or their representatives, to have the property of the firm applied first in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights. For the purpose making such payment of the debts and liabilities, the liquidator is supposed to have called for claim from third parties and no such claim had been called in the present case and liquidator relied on only the balance sheet and the amounts mentioned therein, which is not the correct way to ascertain the debts and liabilities of the firm in the course of winding up of the firm.



O.P.No.40 of 2019, etc., batch

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6.4.4 As far as Section 48 of the Partnership Act is concerned, it deals with settlement of accounts of the firm after dissolution, wherein certain rules has to be observed and as per the said rules,

(a) losses including deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits. Therefore, the losses had to be settled initially out of the profits and if the profits is not sufficient, then out of the capital.

(b) Consequently the assets of the firm including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the manner and order in paying the debts of the firm to third parties.

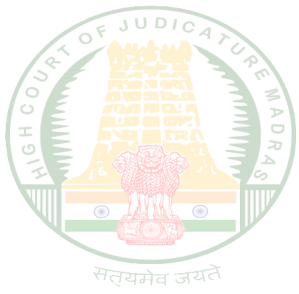
6.4.5 In the process of adjudication of debts of the firm, the interest of the third parties also involved and the same has to be determined, which is not some figures appearing in the balance sheet to take it as final figures. It may be final for partnership firm, but the creditors may dispute the same and



O.P.No.40 of 2019, etc., batch

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claim more and debtors may claim less. The auditors of the respective balance sheet had obtained confirmation of balance only from few creditors. Many creditors had not issued the balance confirmation which does not mean that they have not disputed the claim in the the firm. Hence, if any claim is called for in the course of winding, all the claimants will file their claim, thereafter, the same will be adjudicated by the liquidator. In the present case, the Tribunal had not called for any claims. They have only decided the issue as per the report provided by the Chartered Accountant and allocated the editions to the partners as if no third parties are involved. In the course of the winding up proceedings, it is the duty of the Liquidator to call for the claims and thereafter only, he can determine the liabilities of the partnership firm. In the present case, in the absence of any order for appointment of liquidator, the Arbitral Tribunal had assumed themselves as liquidator and played the role of liquidator of the partnership firm. The said act of the Arbitrators is not at all permitted by any law or agreed by the parties to the proceedings. Hence, the acts of the Tribunal is in excess and without any authority of law.

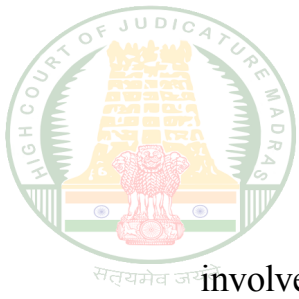


O.P.No.40 of 2019, etc., batch

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6.4.6 For instance, in the course of insolvency of an individual, if a person is declared as insolvent, then the entire assets and liabilities will be taken over by the Official Assignee and thereafter, he will call for claims from the public to adjudicate the claims to determine the liabilities of individual and he will not go based on the audited balance sheet of the insolvent. In spite of the audited balance sheet, it is the duty of the Official Assignee to call for the claim and if any claim is made, he has to adjudicate the said claims. He may agree for the entire claims or he may reject a portion of the same. The person aggrieved can address his grievances before the Court, that is what the law provides even in the case of individuals.

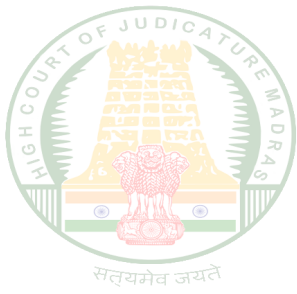
6.4.7 In the present case, Section 48 of the Partnership Act itself mandates the method of distribution of assets of the dissolved firm, wherein the payment of the debt to the third parties will get priority after the settlement of losses. For settling all the debts, the person, who is liquidating the assets, has to call for the claims, where the third party's interest is



O.P.No.40 of 2019, etc., batch

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involved and certainly the Arbitrators cannot decide the same. The jurisdiction of the Arbitrators, in terms of the provisions of Arbitration and Conciliation Act, is that the Arbitrator has to decide a dispute which arise out of the terms of the agreement. In the present case, though the issue pertaining to dissolution is relating to the terms of partnership deed, the issue relating to the winding up of the firm is not only pertaining to the involvement of the partners alone, but also the involvement of public at large. In the course of liquidation, at any cost, the Liquidator of the partnership firm cannot dispense with calling for the claims from the third parties for settling the same. This has to be carried out mandatorily even if the balance sheet of the firm shows no third party claims. If any third party claims are received, certainly, the said third parties cannot address their grievances before the Arbitrator, since they are neither the parties to the arbitration agreement nor the partners of the firm. When the interest of third parties, who are not parties to the agreement, is involved, certainly the Arbitrator cannot decide the dispute, since it is not permissible for the Arbitrator to deal beyond the scope of the partnership deed.

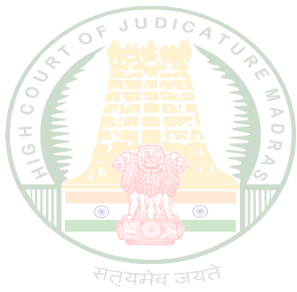


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6.4.8 In the present case, without any authority, the Arbitrators had proceeded to act as a Liquidator and took the liabilities mentioned in the balance sheet as liabilities of the firm and proceeded to settle the debts by liquidating the certain properties of the firm. As per the provisions of the Partnership Act 1932, it is not the way of liquidating the assets for payment of debts to the third parties.

6.4.9 The third parties referred above, is not only secured and unsecured creditors, but it also includes the PF authorities, income tax claims, employee, workers claim etc. Without dealing those aspects, it is impossible to wind up the firm. As stated above, since the third party interest is involved at large, the Arbitrators cannot act as Liquidator to liquidate the Assets of the firm. Now let me deal with the observations and reasons, which are provided by the Tribunal for its justifications.



O.P.No.40 of 2019, etc., batch

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6.4.10 The Tribunal, at Paragraph Nos.2.12 to 2.22 in its third interim award dated 29.09.2018, had dealt with this aspect elaborately, which are extracted hereunder:

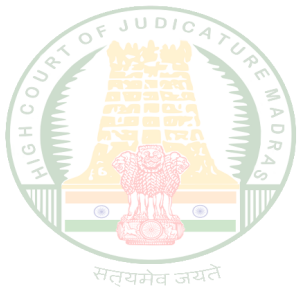
2.12 Now, we will examine the merits of the contention of Claimants 2 and 3, raised in the written arguments that the Arbitral Tribunal, which is Private Fora cannot Arbitrate on the dispute, whether the Firm has to be dissolved or not, and such dispute can be decided only a Public Fora viz a Civil Court. In support of the said contention, Claimants 2 and 3 have relied on the decisions of the Supreme Court in

(1) Boozallen and Hamilton Inc Vs SBI Home Finance Ltd & Others (2011) 5 SCC 532

(2) A Ayyasamy Vs A Paramasivam& Others (2016) 10 SCC 386

(3) The Order of the Single Judge of the Kerala High Court dated 6.3.2018 in CRP No 439/2016 in TA Kadeeja Vs Manjusha.

2.13 In support of the contention of the Claimants 2 and 3. that the Arbitral Tribunal which is Private Fora cannot have jurisdiction to decide the dispute whether the Firm has been dissolved, and such dispute can be decided only by the Civil Court placed reliance on para 5 of the Order dated 6.3.2016 in CRP 439/2016 of the Kerala High Court which reads as follows: "It is now well settled that statutory remedy which would end in judgement in rem can be adjudicated only by a Civil Court. The purpose of arbitration should be understood in the light of the settled position that Arbitrator cannot usurp the jurisdiction



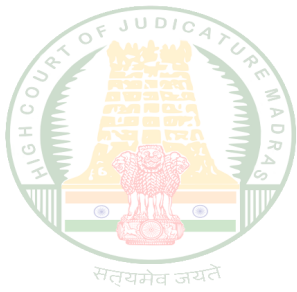
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vested in a Civil Court under any statute either to declare a particular thing or status or right of a party, which would result in a judgment in rem. Dissolution of partnership is a statutory remedy under Section 44 of the Partnership Act and it is a declaration to the effect that the partnership would stand as dissolved. It is a judgment in rem and hence it can be agitated only in a Civil Court as it is a statutory remedy which would result in a judgment in rem: It really amounts to declaration of the status of a party."

2.14 In para 6 of the Order, the Kerala High Court placed reliance on the decisions of the Supreme Court in Ranjit Kumar Bose and another v. Anannya Chowdhury and another (AIR) 2014 SC (1534). In para 6 of the Order, the Kerala High Court has held that dissolution of a partnership amounts to statutory declaration and hence it cannot be referred for arbitration under Section 8 of the Act.

2.15 The Supreme in Booz Allen and Hamilton Inc Vs SBI Home Finance Ltd & Others (2011) 5 SCC page532, has held that in those disputes where the subject matter falls exclusively within the domain of Public Fora viz. Courts, such disputes would be non-Arbitrable and cannot be decided by Arbitral Tribunal but by Courts alone. The justification and rationale given for adjudicating such disputes through the process of Courts viz. Public Fora and not by Arbitral Tribunals which is a Private Forum, is given by the Supreme Court in paras 35 to 38 of the Judgement in Booz Allen's case as follows:

35. The Arbitral Tribunals are private Fora, chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and Tribunals which are public Fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral



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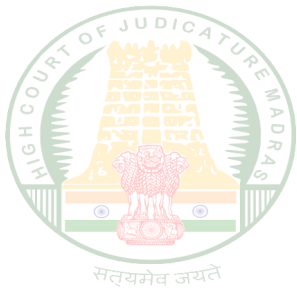


O.P.No.40 of 2019, etc., batch

Tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for Public Fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by Public Fora (courts and tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause / dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.

36. The well-recognised examples of non-arbitrable disputes are: (1) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody: (1) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

37. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against the specific individuals. Actions in personam refer to actions determining the rights and interests of the parties



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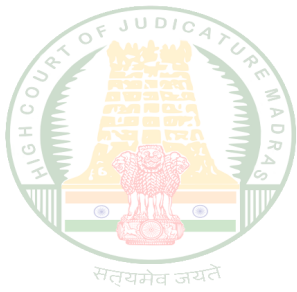
O.P.No.40 of 2019, etc., batch

themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, a judgement in personam refers to a judgement against a person as distinguished from a judgement against a thing, right or status or condition of property which operates directly on the property itself. (Vide Black's Law Dictionary.)

38. Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to subordinate rights in Personam arising from Rights in Rem have always been considered to be arbitrable."

2.16 In A Ayyasamy Vs A Paramasivam (2016) 10 SCC page 386 in para 14 of the Judgement, the Supreme Court has held as follows:

"14. In the instant case, there is no dispute about the arbitration agreement in as much as there is a specific arbitration clause in the partnership deed. However, the question is as to whether the dispute raised by the respondent in the suit is incapable of settlement through arbitration. As pointed out above, the Act does not make any provision excluding any category of disputes treating them as non-arbitrable. Notwithstanding the above, the courts have held that certain kinds of disputes may not be capable of adjudication through the means of arbitration. The courts have



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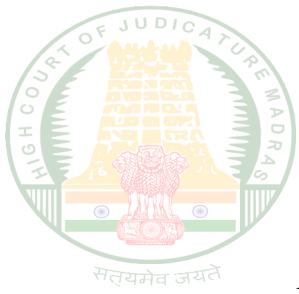
held that certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, cannot be referred to arbitration. The following categories of disputes are generally treated as non-arbitrable.

- (i) Patent, trade marks and copy right;*
- (ii) Anti-trust / competition laws*
- (iii) Insolvency / winding up;*
- (iv) Bribery / corruption*
- (v) Fraud*
- (vi) Criminal matters.*

Fraud is one such category spelled out by the decisions of this Court where disputes would be considered as non-arbitrable."

2.17 The Supreme Court in para 35 of the Judgment in Booz Allen's case says as follows:

"Every civil or commercial dispute, either contractual or non- contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for Public Fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by Public Fora (courts and tribunals), may by necessary implication stand excluded from the purview of private fora."



O.P.No.40 of 2019, etc., batch

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As pointed out by the Supreme Court in para 12 of the Judgement in V H Patels (2000) 4 SCC 368 case referred above, if under the terms of the reference all disputes and difference arising between the parties have been referred to arbitration, the arbitrator will, in general, be able to deal with all matters, including dissolution and that there is no principle of law or any provision which bars an arbitrator to examine such a question. Again, the Claimants 2 and 3 have not produced any material which would show that the adjudication of the disputes relating to dissolution of partnership is reserved by the legislature exclusively for Public Fora as a matter of Public Policy.

2.18.1 In para 38 of the Judgement in Booz Allen's Case, the Supreme Court has held that generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all. disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. In the same para 38, the Supreme Court further points out that the general rule stated in the 1st part of para 38 referred above is not a rigid and inflexible rule and that the disputes relating to subordinate rights in Personam arising from Rights in Rem have always been considered to be arbitrable, it is settled position of law that a right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against the specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. In the present case, the 5th Claimant in his additional claim statement dated 1.9.2012 prayed for the reliefs of declaration

(a) that the partnership firm M/s Dinamalar is



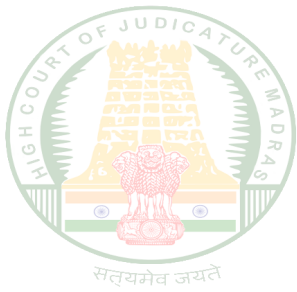
dissolved with effect from 27.2.2012 as per the dissolution notice issued by the 5th claimant in accordance with law and for

(b) ordering winding up of M/s Dinamalar in accordance with law and to

(c) appoint an auditor or auditors for the purpose of special audit to audit accounts of the firm M/s Dinamalar in respect of all editions from the year 1999-2000 to till the date of filing the additional claim statement and to find out the properties owned or deemed to have owned out of the funds of M/s Dinamalar, including the appointment of Engineer(s), Valuer(s), necessary and suitable persons, receiver, etc., in order to do all the acts and deeds completely, effectively and legally to wind up business in accordance with law.

The 1st Claimant has filed an affidavit of pleadings dated 5.10.2012 stating that he is not opposed to the relief of dissolution of the Firm claimed by the 5th claimant. Claimants 2 and 3 contended that it is not proper to entertain a Plea of Dissolution advanced by the 5th claimant without giving a finding the prayers made by other claimants in their original claim statements. The contention of the 4th claimant (since deceased) was that the remedy of claimant No 5 is only to retire from the Firm and not seek dissolution especially when the other partners have not sought for dissolution of the Firm. It must be pointed out that the Claimants 2 and 3 have not raised the plea that the dispute relating to dissolution of the partnership is not an arbitrable dispute.

2.18.2 Section 46 of the Partnership Act provides that



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O.P.No.40 of 2019, etc., batch

"On the dissolution of a Firm, every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the Firm applied in payment of the debts and liabilities of the Firm, and to have the surplus distributed among the partners or their representatives according to their rights."

Section 48 of the Partnership Act deals with the mode of settlement of accounts between the partners.

Section 48 (a) says as follows:-

"In settling the accounts of a Firm after dissolution, the following rules shall subject to agreement by the partners, be observed:

(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary by the partners individually in the proportions in which they were entitled to share profits.

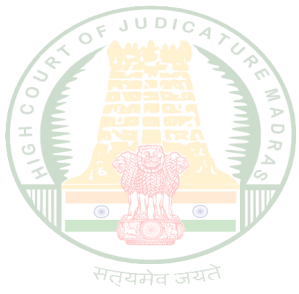
Section 48 (b) says that the assets of the Firm including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order-

(i) in paying the debts of the Firm to third parties;

(ii) in paying to each partner rateably what is due to him from the Firm for advances as distinguished from capital;

(iii) in paying to each partner rateably what is due to him on account of capital; and

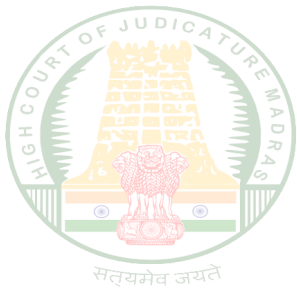
(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits."



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2.18.3 relating to the dissolution of the Firm will come within the realm of a right? in personam rather than a right in Rem. A careful examination of the reliefs claimed by the 5th Claimant in the additional claim statement, praying for the dissolution of the Firm and the nature of pleadings of the other Claimants as well as the rights available to the parties on the dissolution of the Firm, as per Sec 46 and 48 of the Partnership Act, would show that the facts of the present case relating to the dissolution of the firm will come within the realm of a right in personam rather than a right in rem.

2.19.1 The Supreme Court in para 36 of the Judgement in Booz Allen's Case (2011) SCC 532, and in para 41 of the Judgement in A Ayyasamy's case (2016) 10 SCC page 386, listed the well recognized categories of disputes which are generally treated as non-Arbitrable. It must be pointed out that the said lists of non Arbitrable disputes as per the decisions of the Supreme Court, referred above do not include the dispute relating to the dissolution of the Partnership. Si No iv in the list of non-Arbitrable disputes given in matter" of the judgement of Booz Allen's case is insolvency and winding up. The contention of the Claimants 2 and 3 is that since the Insolvency and winding up matters are not arbitrable as per para 36 of the Judgement in Booz Allen's case, the winding up of a Firm also cannot be decided by the Arbitral Tribunal. There is no merit in the said contention of Claimants 2 and 3. our view, the words "Insolvency and winding up matter found in item iv in para 36 of Booz Allen's case, must be read jointly and not disjointly. Therefore Si No iv in the list of non-Arbitrable disputes given in para 36 of the Judgement in Booz Allen's case will apply to a case of winding up of a Company on the ground that it has become commercially insolvent, and not to a case of winding up of a partnership after dissolution. In the present case, the issue relating to dissolution of the Firm is not on the ground of



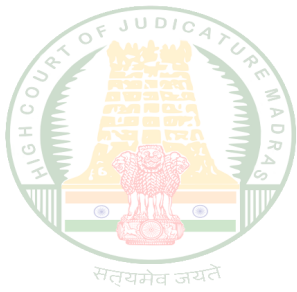
O.P.No.40 of 2019, etc., batch

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insolvency of a partner. Item No iv in the list of non-arbitrable disputes in para 36 of the Judgement in Booz Allen's case is included on the basis of the decision of the Supreme Court in Haryana Telecom Ltd Vs Sterlite Industries (India) (1999) 5 SCC 688 wherein the Supreme Court dealing with a winding up petition filed under the Companies Act has held as under:

5. The claim in a petition for winding up is not for money. The petition filed under the Companies Act would be to the effect, in a matter like this, that the Company has become commercially insolvent and, therefore, should be wound up. The power to order winding up of a Company is contained under the Companies Act and is conferred on the Court. An Arbitrator notwithstanding any agreement between the parties, would have no jurisdiction to order winding up of a Company. The matter which is pending before the High Court in which the application was filed by the petitioner herein was relating to winding up of the Company. That could obviously not be referred to Arbitration, and therefore, the High Court, in our opinion was rejecting the application."

2.19.2 The said decision of Supreme Court in Haryana Telecom Ltd Vs Sterlite Industries (1999) 5 SCC 668 was considered in para 42 of the Judgment of Supreme Court in Booz Allen Case. In our view of the ratio of the decision in Haryana Telecom Ltd's Case (1999) 5 SCC 668, cannot be applied to the facts of the present case, particularly when the Claimants 2 and 3 along with other Claimants agreed before the Supreme Court, for the Arbitral Tribunal to take up and decide the issue of the dissolution of Firm, which is evident from the consent order in SLP (Civil) 14417/2013 dated 42.9.2013



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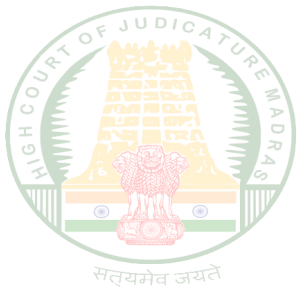
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extracted in para 1.3 supra.

2.20.1 Next we will examine the contention of the Claimants 2 and 3, based on the decision of Kerala High Court dated 6.3.2018 in CRP No 439 of 2016, that dissolution of partnership is a statutory remedy under Section under Section 44 of the Partnership Act and it is a declaration to the effect that the partnership would stand as dissolved that it is a judgment in rem and hence it can be agitated only in a Civil Court as it is a statutory remedy which would result in a judgment in rem and that it really amounts to declaration of the status of a party.

2.20.2 The Kerala High Court in the support of its conclusion placed reliance on the decision of Supreme Court in Ranjit Kumar Bose & another Vs AnnayaChowdary (2014) 11 SCC 446. In the case before the Supreme Court in Ranjit Kumar Bose (2014) 11 SCC 446, the tenancy agreement between the parties contained an Arbitration clause, providing for anydispute arising out of tenancy agreement to be settled by Arbitrator in accordance with provisions of Arbitration and Conciliation Act 1996. The Supreme Court held that the reference of dispute to Arbitration is not permissible in that case in view of bar contained in this regard under Section 6 of the W.B. Premises Tenancy Act 1997 concerned, which prescribed that, notwithstanding anything contrary contained in any contract, the dispute as to recovery of possession of premises by landlord from tenant had to be decided only by the Civil Judge having jurisdiction under the Tenancy Act. The Supreme Court further found that there was statutory bar to Arbitration in Section 6 of W.B.Premises Tenancy Act providing that the dispute can only be decided by the Civil Judge in a suit.

2.20.3 It must be pointed out that in the Indian



O.P.No.40 of 2019, etc., batch

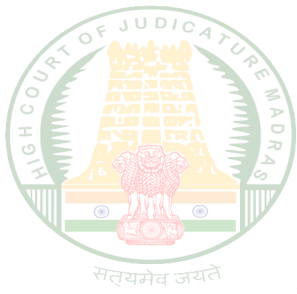
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Partnership Act, there is no bar for the reference of disputes between the parties to Arbitration, similar to the one in Section 6 of W.B. Premises Tenancy Act 1997 dealt with the Supreme Court in the Ranjit Kumar Bose (2014) 11 SCC 446, referred above.

2.20.4 As a matter of fact, the Supreme Court in para 12 of the Judgement in V A Patel Case (2000) 4 SCC 368, pointed out that there is no principle of law or any provision which bars the Arbitrator to examine the question whether or not partnership shall be dissolved and to award its dissolution. We are bound to follow the decision of Supreme Court in VA Patel Case (2000) 4 SCC 368 referred above in this regard, rather than the decision of the Single Judge of Kerala High Court dated 6.3.2018 in CRP No 439 of 2016 referred in para 2.20.2 supra.

2.21 Further, the Supreme Court in GudySabibethors (2003), Scc 229, as well as in Chandi Panda Vs SevatiNadar 11995 dealt with cases where the Arbitrators passed Awards, distributing the residuest assets, after accounts, on dissolution of a partnersiFiem, to the erstwhile partners belonging to the same family, and while distributing the residue of assets, the Arbitrators allocated the specific items of properties to the partners. This would show that the Supreme Court, in the above mentioned cases proceeded on the basis that the disputes relating to dissolution of Firm are Arbitrable disputes.

2.22 For all the reasons stated above, we are unable to accept the belated submission of Claimants 2 and 3 in their written submissions that the Arbitral Tribunal, which is Private Fora cannot Arbitrate on the dispute, whether the Firm has to be dissolved or not, and such dispute can be decided only a Public



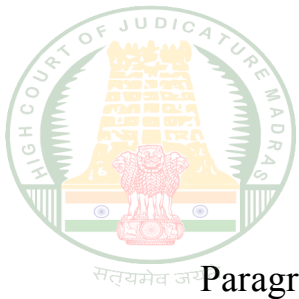
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Fora viz a Civil Court.”

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6.4.11 The Tribunal had referred the Paragraph No.12 of judgement in ***V.H.Patel & Company and others vs. Hirubhai Himabhai Patel and others*** reported in ***(2000) 4 SCC 268*** and held that if in terms of the reference of disputes and differences arising between the parties to Arbitration, the Arbitrator will deal with the matters including the dissolution and there is no law or any provisions which bars the Tribunal from examining such question. As far as this aspect is concerned, this Court had already held that the Arbitrator is always empowered to decide the issue pertaining to the dissolution. However, now the issue is pertaining to winding up of the firm and the said judgement does not speak anything about the winding up of the affairs of the firm.

6.4.12 In the ***Booz Allen's*** case, at a Paragraph No.36(iv) it was held that the insolvency and winding up are non-arbitrable disputes. However at a

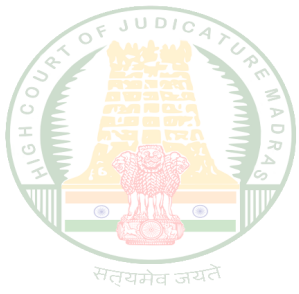


O.P.No.40 of 2019, etc., batch

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Paragraph No.38 of the same judgement, it was held that it is not rigid and inflexible rule and further held that the dispute relating to subordinate right in *personam* arising from the right in *rem* are always considered to be arbitrable.

In the present case, the right to be decided in the course of winding up, it is not that either the right in *personam* or the subordinate right of *personam* arising from the right in *rem* alone, but also the right in *rem* of the third parties at large. Hence, the matters pertaining to the winding up of the partnership firm are not arbitrable. At Paragraph No.2.18.3 of the third interim award, the Tribunal had categorically stated that the present facts of the case, which is relating to the dissolution of the firm, will come within the realm of right in *personam* rather than the right in *rem*. While such was the finding of the Tribunal, this Court is unable to understand as to why and how the Tribunal proceeded to decide the right in *rem* also which would arise in the course of winding up of the firm. This Court feels that the Arbitral Tribunal had consciously committed patent illegalities while passing the Arbitral Award and the same is contrary to law laid down by the Hon'ble Apex Court and also shocks the conscience of this Court.

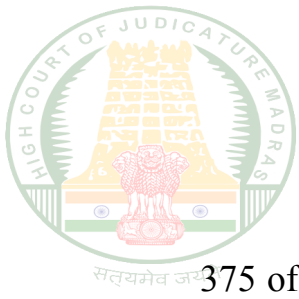


O.P.No.40 of 2019, etc., batch

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6.4.13 The Tribunal while dealing with the *Booz Allen's* case, at Paragraph No.36(iv), wherein it was held that the insolvency and winding up matters are not arbitrable and with regard to the same, the Tribunal had observed at para 2.19.1. that the said law would apply only for the winding up of the “company” and not for the “partnership firm”. However, this Court is of the view that this is not the law that had been laid down by the Hon'ble Supreme Court. The insolvency would come in case of individual and winding up would come in case of the partnership firm, society, company, limited liability partnership, co-operative society or Association etc.

6.4.14 Section 46 of the Partnership Act has been titled as “**Right of partners to have business wound up after dissolution**”. Section 47 of the Partnership Act has been titled as “**Continuing Authority of partners for the purpose of winding up**”. The procedure for winding up of a company in case, if any partnership firm is intend to wind up where there are more than 7 partners are available and the same can be carried out in terms of Section



O.P.No.40 of 2019, etc., batch

375 of the Companies Act, 2013.

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6.4.15 If the said analogy of the Tribunal is taken into consideration, in such case also, the Arbitrator who has acted as Liquidator, has to call for the claims from the third parties and they have to adjudicate the said claims. However, the said claims cannot be decided by the Arbitrators since there are third party interest, where the right in *rem* arises, thus, which dispute is certainly beyond the scope of partnership deed. Even, if the partnership firm does not have any claim, the same can be decided, only upon the calling for the claim, which act is beyond the scope of Arbitrators' jurisdiction and they are not permitted to do so in the present case. It is also nobody's case that all the partners waived the requirement of arbitration agreement and given liberties to the arbitrators. Even in such scenario also, the arbitrators have no right/authority to decide anything pertaining to right in *rem* which would arise public at large. In the event, if any waiver of right in terms of Section 4 of the Arbitration and Conciliation Act, 1996, by the parties to the partnership deed, it would only to the extent of the determination of rights among the partners

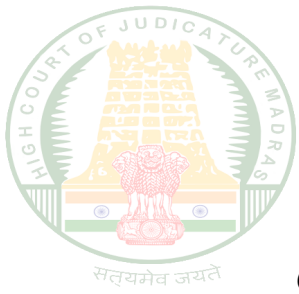


O.P.No.40 of 2019, etc., batch

alone, but not against the third parties.

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6.4.16 Further, it has been held by the Arbitral Tribunal that the winding up, which was referred at Paragraph No.36(iv) in the **Booz Allen's** case, would not apply in the partnership firm. In the case of the Partnership Firm, Limited Liability Partnership or Society or Cooperative Society, Association or Company, which are all having more than 7 members, the same would be considered as an unregistered Company within the meaning of Section 582 of the Companies Act 1956 and Section 375 of the Companies Act 2013. Hence, an unregistered Company (Partnership firm) can be wound up as per the provisions of the Companies Act, 1956 as well as the Company Act, 2013, once the same is dissolved in terms of the provisions of the Partnership Act. Thus, this Court is not in a position to accept the findings of the Tribunal, since the same is not in accordance with the law laid down by the Hon'ble Supreme Court in the **Booz Allen's** case as well as **A.Ayyasamy** case, as discussed above.



O.P.No.40 of 2019, etc., batch

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6.4.17 As per the provisions of Companies Act, for the purpose of winding up of an unregistered firm, having more than 7 members, the Partnership Act would apply and in the same way, they can also wound up the partnership firm under the Companies Act. For ready reference, Section 582 of the Companies Act, 1956 and Section 375 of the Companies Act, 2013 are extracted hereunder:

Section 582 of the Companies Act, 1956, reads as follows:

582. MEANING OF "UNREGISTERED COMPANY"

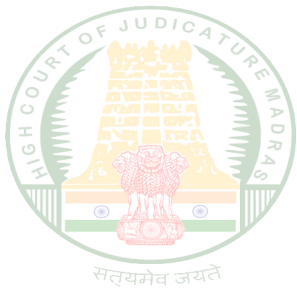
For the purposes of this Part, the expression "unregistered company" -

(a) shall not include -

(i) a railway company incorporated by any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom ;

(ii) a company registered under this Act ; or

(iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden or Pakistan immediately before the separation of that country from India ; and



O.P.No.40 of 2019, etc., batch

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(b) save as aforesaid, shall include any partnership, association or company consisting of more than seven members at the time when the petition for winding up the partnership, association or company, as the case may be, is presented before the 1 [Tribunal]. 1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

583. Winding up of unregistered companies.-

(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in sub- sections (3) to (5).

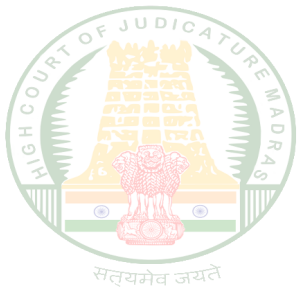
*(2) ****

3) No unregistered company shall be wound up under this Act voluntarily (by the Tribunal),

(4) The circumstances in which an unregistered company may be wound up are as follows:-

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) it the company is unable to pay its debts;



O.P.No.40 of 2019, etc., batch

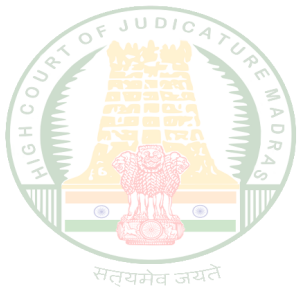
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© if the Court is of opinion that it is just and equitable that the company should be wound up.

(5) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts-

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, managing agent, secretaries and treasurers, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, managing agent, secretaries and



O.P.No.40 of 2019, etc., batch

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treasurers, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not, within ten days after service of the notice,-

- (i) paid, secured or compounded for the debt or demand; or*
- (ii) procured the suit or other legal proceeding to be stayed; or*
- (iii) indemnified the defendant to his satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;*

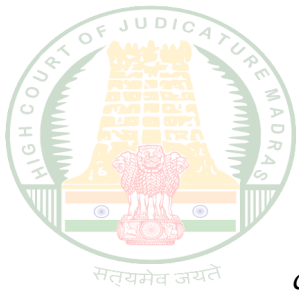
(c) if execution or other process issued on a decree or order of any Court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part;

(d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

Section 375 of the Companies Act, 2013, reads as follows:

375. Winding up of unregistered companies.—

(1) Subject to the provisions of this Part, any unregistered



O.P.No.40 of 2019, etc., batch

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company may be wound up under this Act, in such manner as may be prescribed, and all the provisions of this Act, with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in sub-sections (2) to (4).

(2) No unregistered company shall be wound up under this Act voluntarily.

(3) An unregistered company may be wound up under the following circumstances, namely:—

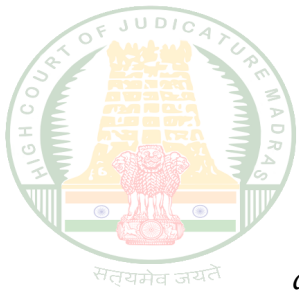
(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) if the company is unable to pay its debts;

(c) if the Tribunal is of opinion that it is just and equitable that the company should be wound up.

(4) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one lakh rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Tribunal may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the



O.P.No.40 of 2019, etc., batch

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demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor; 202

(b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character as a member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Tribunal may approve or direct, the company has not, within ten days after service of the notice,

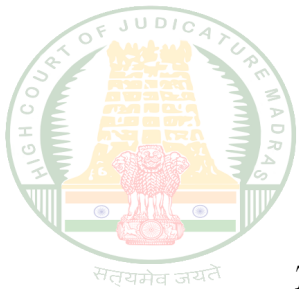
(i) paid, secured or compounded for the debt or demand;

(ii) procured the suit or other legal proceeding to be stayed; or

(iii) indemnified the defendant to his satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(c) if execution or other process issued on a decree or order of any Court or Tribunal in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part;

(d) if it is otherwise proved to the satisfaction of the



O.P.No.40 of 2019, etc., batch

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Tribunal that the company is unable to pay its debts. Explanation.

—For the purposes of this Part, the expression "unregistered company"— (a) shall not include—

(i) a railway company incorporated under any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom;

(ii) a company registered under this Act; or

(iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden, Pakistan immediately before the separation of that country from India; and

(b) save as aforesaid, shall include any partnership firm, limited liability partnership or society or co-operative society, association or company consisting of more than seven members at the time when the petition for winding up the partnership firm, limited liability partnership or society or cooperative society, association or company, as the case may be, is presented before the Tribunal.”

6.4.18 A reading of the above makes it clear that if there are more than 7 partners, the partnership firm can be wound up as per the provisions of both the Companies Act. Therefore, the findings of the Tribunal, that the word

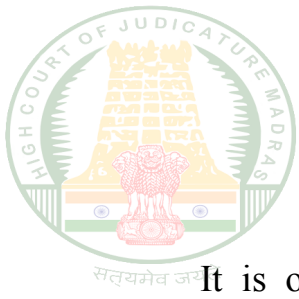


O.P.No.40 of 2019, etc., batch

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“winding up” would not apply to the partnership firm but for the companies alone, is not correct and the said findings of the Tribunal is liable to be set aside as the Tribunal committed patent illegalities while dealing with the said aspect without considering the law laid down by the Hon'ble Apex Court and the provisions of Partnership Act and the Companies Act.

6.4.19 The Hon'ble Supreme Court of India held that the dispute pertaining to insolvency and winding up are not arbitrable. This is because for individuals, the insolvency proceedings would apply. For all others, except the individuals, the word “winding up” would be the right word and the same is applicable to the partnership firm, limited liability partnership or society or cooperative society, association or company as stated in Section 582 of the Companies Act, 1956 and Section 375 of the Companies Act, 2013. Here, again an argument may come to the extent that in the present case, total number of partners in the firm is less than 7, what would be the procedure to be followed, in which case, the provisions of Partnership Act has to be followed mandatorily. This provision would apply to any number of partners.



O.P.No.40 of 2019, etc., batch

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It is only option to the partners to follow the provisions of unregistered company under the Companies Act, 2013, where, the number of partners are more than 7. I have quoted the Section 582 of Companies Act, 1956 and Section 375 of the Companies Act, 2013, only to substantiate that the word “*winding up*” mentioned in the Apex Court judgement would also apply to any type of the partnership firm as well. In terms of Section 48 of the partnership Act, the accounts of the dissolved firm has to be settled. While settling the accounts of dissolved firm, the liquidator (Arbitrators) first, has to call for the claims from third parties as discussed above which they have not followed and also not empowered to do so.

6.4.20 The Kerala High Court judgement, in ***T.A.Kadeeja*** case, has dealt with the aspect of right in *rem* and right in *personam* wherein it has been held that the dissolution of the partnership is a Statutory remedy under Section 44 of the Partnership Act and it is a declaration to the effect that the partnership stands dissolved. As far as the said finding is concerned, I am not in agreement with the same for the reason stated in the answers to the Issue



O.P.No.40 of 2019, etc., batch

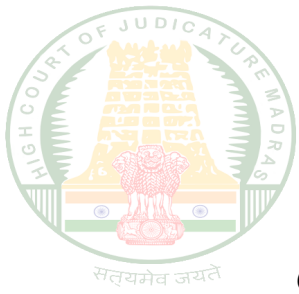
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Nos.1, 2 and 3 as that the dissolution is one stage and the winding up is another stage. Further, no declaration is required from the Court except the situations mentioned in Section 44 of the Partnership Act, when there is a provision in the Partnership deed for the dissolution of the partnership firm is “one at will”, in which case, if the intention to dissolve the firm is conveyed by anyone of the partners in writing to the other partners, the dissolution will takes effect from the date of notice or any other date mentioned in the said notice. Hence, such proportion of law will not be applicable for the present facts of the case and the same is not correct law in full extent.

6.4.21 The following two more judgements of the Hon'ble Supreme Court have been dealt with by the Tribunal in support of their finding:-

(i) ***Khandervali Sahib and others Vs. Gudu Sahib and others*** reported in (2003) 3 SCC 229;

(ii) ***S.V.Chandra Pandian vs. S.V.Sivalinga Nadar*** reported in (1993) 1 SCC 589;

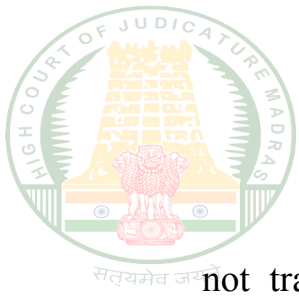


O.P.No.40 of 2019, etc., batch

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6.4.22 The real question, that came up for consideration before the Hon'ble Supreme Court in the above two cases, is as to whether an arbitration award amounts to creation of or transfer of any fresh right to movable or immovable properties, so as to bring it within the ambit of Section 17 of the Registration Act. The Hon'ble Supreme Court held that on dissolution of partnership firm, the allotment of assets to individual partner is not a case of transfer of any assets of the firm.

6.4.23 The assets which herein before belonged to each partner, will after dissolution of the firm stand allotted to the partners individually. Therefore, there is no transfer or assignment of ownership in any of the assets. Further, it was held that this is the legal consequence of distribution of assets on dissolution of a partnership firm. The distribution of assets may be done either by way of an arbitration award or by mutual settlement between the partners themselves. Therefore, it was held that the document which records the settlement in this case is an award which does not require registration under Section 17 of the Registration Act, since the document does

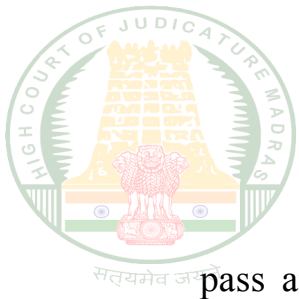


O.P.No.40 of 2019, etc., batch

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not transfer or assign interest in any asset, but only the settlement was reduced in the form of award. Hence, the issue came up for consideration is whether the settlement arrived in the form of award is required to be registered under Section 17 of the Registration Act or not. The Hon'ble Supreme Court held that it is not required to register under Section 17 of the Registration Act.

6.4.24 Therefore the Hon'ble Supreme Court had no opportunity to deal with the issue whether the Arbitrator can liquidate the assets by acting as a Liquidator, where the third party interest also involved subsequent to the dissolution of the firm. Thus, it was not decided by the Hon'ble Supreme Court in the above two cases about the power of Arbitrators to liquidate and consequently to continue with the winding up proceeding of the partnership firm. On reading the above judgements, it appears that the settlement was reduced in the form of Award. So, when the parties have agreed mutually, the award can be passed by virtue of settlement. In the present case, the parties have not agreed for any sort of settlement. That apart, the Arbitrators cannot

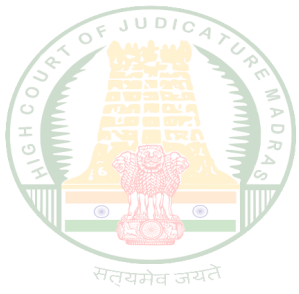


O.P.No.40 of 2019, etc., batch

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pass any award on the equity or on their own choice, without the express consent of the parties. Admittedly, no express consent has been provided in terms of Section 28(2) of the Arbitration and Conciliation Act, 1996 by the parties concerned. Similarly, the said provision was also not available before 1996 Act ie., in the Arbitration Act, 1940. In the absence of availability of the similar provisions of Section 28 (2) of 1996 Act, in the 1940 Act, the award came to be passed. Thus, law laid down by the Hon'ble Apex Court in the above two judgements is not applicable to the present fact of the case, since the issue decided before this Court is not the issue before the Hon'ble Apex Court.

6.4.25 In view of the above, no doubt that the winding up of the firm amounts to liquidating the Assets and the liabilities of the partnership firm and hence, the Arbitral Tribunal have no jurisdiction to act as a Liquidator to liquidate the assets and liabilities of the partnership firm for the reasons stated above. Accordingly, **Issue No.IV is answered above.**



O.P.No.40 of 2019, etc., batch

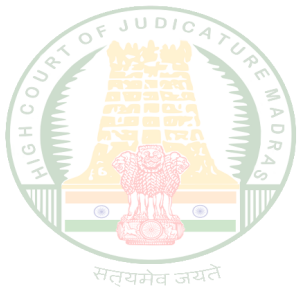
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6.5 Issue No.V:-

Whether the Tribunal can adjudicate the interest/claim of the third parties in the arbitration proceeding in the absence of any agreement with the third parties?

6.5.1 This issue has already been dealt with while answering the Issue No.IV, wherein this Court had held that the third parties right cannot be decided in Arbitration, except in a situation where the dispute is relating to the subordinate right in *personam* arising out of the right in *rem*. In the present case, no third party subordinate right in '*personam*' arose out of the right in *rem*. The third party right that would arise in the present case is not at all a subordinate right in *personam* arising from the right in *rem* but only a right in *rem*. Therefore, this Court is of the view that the Tribunal in the present case have no jurisdiction to deal with the third parties rights for the reasons provided above. Accordingly, the **Issue No.V is answered.**

118/183



O.P.No.40 of 2019, etc., batch

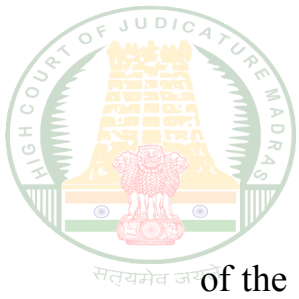
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6.6 Issue No.VI:-

Whether the Tribunal can adopt a particular method and decide the same on their own choice in equities, fairness and conscience when the partnership deed do not provide the method of winding up nor any other agreement between the parties to permit the Tribunal to act as *amiable compositeur* by following a method of winding up and distribution of assets of its own choice and on equity?

6.6.1 This Court already held that the Arbitral Tribunal have no jurisdiction to deal with the winding up of the affairs of the partnership firm. Once this Court arrived at a finding that the Arbitral Tribunal does not have any jurisdiction to deal with the winding up of the partnership firm, normally this Court will keep away from traversing anything further, with regard to any other aspects, which have dealt with by the Tribunal. However, in the present case, since the Arbitral Tribunal have dealt elaborately with the aspect of procedure to be followed as to how the accounts should be taken of the assets

119/183



O.P.No.40 of 2019, etc., batch

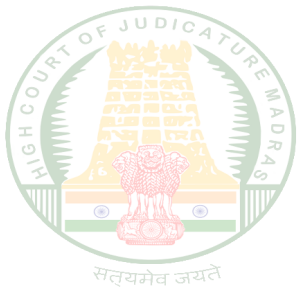
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of the dissolved firm in question and the method by which the distribution of assets between the partners of the dissolved firm, this Court inclined to deal with the said aspects as well. It is admitted by all the parties that there is no provision in the partnership deed with regard to the method of distribution of the assets of the dissolved firm among the partners and the method of accounts to be followed by the partners of the dissolved firm. This aspect had been dealt with by the Arbitral Tribunal elaborately in the second interim award at paragraph Nos.16 to 22, which are extracted hereunder:-

16. Now we proceed to examine the procedure to be followed as to how the accounts should be taken of the assets of the dissolved Firm in question and the method by which the assets are distributed between the partners of the dissolved Firm. In the present case, the Terms of Partnership deed do not provide the method of winding up the partnership after it is dissolved nor is there any agreement between partners as to the method by which the accounts should be taken of the assets if the partnership were to be dissolved, though clause 21 of the partnership deals with the method by which accounts should be taken of the assets if partners were to retire after some time.

17. The Madras High Court in the decision in Md Hussain Vs Abdul Wahab (AIR 1950 Madras p 758) held as follows::

"The articles of partnership do not provide the method of winding up the partnership after it is dissolved nor is there any agreement between the partners as to the method by which the accounts



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O.P.No.40 of 2019, etc., batch

should be taken of the assets, if the partnership were to be dissolved or if the partners were to retire after some time. The general rule applicable, when there is no agreement between the partners prescribing the method of winding up is as stated by Lindley on Partnership at page 507,

"To convert the partnership property into money and this money after the payment of partnership debts must be divided amongst the partners in the shares in which they may be entitled to it."

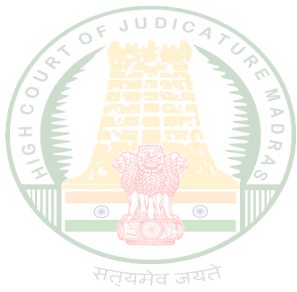
*Where the articles expressly provide that the book value alone should be the basis for determining the profits, as in *Conventry V. Barclay*(1864) 3 DE. GJ & Sec. 320: 46 E, R659 that would govern the rights of the parties. In a case where the articles of partnership provide that the share of a deceased partner in the assets of the partnership should be calculated with reference to the annual account made up on 30th April every year, the House of Lords in *Gruikshank V Sutherland* (1923) 92 L.J Ch. 136 held that if no definite and uniform usage to the contrary is established, the assets of the partnership for the purpose of winding up after the dissolution should be taken, not at the book value but at their fair value to the firm. Merely because the account is settled for one purpose in a particular manner it does not follow as pointed out by Lord Wrenbury in the same case that that method of taking account would be good also for another purpose. The annual accounts are never taken with a view to determine the rights of a deceased partner or a retiring partner. The object of the annual settlement is only for the definite purpose of assessing the profits at the end of the year and so long as the partnership is continued*



it does not make any difference to the partners even if notional value is taken as the value of the assets. The asset at that book value continues to belong to the firm and whatever fluctuations there may be in the value of that asset, the benefit or the loss of it would accrue to the firm. But the situation is totally different when the firm is dissolved or when a partner retires. The settlement of his account must be not on a notional basis but on a real basis, that is, every asset of the partnership should be converted Into money and the account of each partner settled on that basis. No partner is entitled to take advantage of the appreciation of the value of the assets to the detriment to the other partners. So long as the firm continues, it is not possible for any partner to claim exclusively the benefit of the appreciation of the value of the assets for himself and at the time of the dissolution, such benefit must be shared by all the partners equally. The plaintiff is therefore entitled to have the assets of the partnership properly valued for the purpose of winding up of the partnership. The assets have to be valued, of course, on the basis of the market value on the date of the dissolution, that is, 5th December 1942."

18. in *Valliammal Achi & others VS KN PL.V Ramanathan Chettiar & Others* (AIR 1969 Madras 257), the Madras High Court dealing with the general rule of sale of assets of the dissolved Firm held as follows:-

"it is now settled law that a partner's or his representative's lien with reference to partnership assets is on the surplus of the assets of the Firm and not on any particular item of property belonging to the Partnership. On the dissolution of a Firm, all the properties belong to the partnership have to be sold and the sale proceeds



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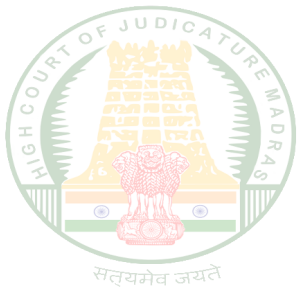


O.P.No.40 of 2019, etc., batch

after discharging all the partnership debts liabilities, have to be divided among the partners according to their respective shares, and this is the general rule. The lien of a partner is not one on any specific assets of the partnership existing on the death of a partner such as would fetter Its conversion into money. The right of a representative of a partner is really a claim against the surplus assets on realization - whether the surplus assets consist entirely of the proceeds of realization or whether they include some specific items of property which existed on the death of the partner."

19.1 Courts have also held that in a suit for dissolution of Firm, in the winding up proceedings, though sale of assets of the dissolved firm is the general rule, the Court has power to mould the relief in accordance with the circumstances of the case. In Pannalal Paul Vs Padmabati Paul (AIR 1960 Cal P 693) the Division Bench Calcutta High Court, speaking through R5 Bachawat J, while rejecting the contention of the Appellants in that case that on a reference of the disputes in a suit for dissolution of a Firm, the Arbitrator has no power to allot the assets and properties of the dissolved Firm to one or more of the partners held as follows:

"By S 46 of the Indian Partnership Act, each partner is entitled to insist that all the assets of the dissolved firm shall be applied for the purposes mentioned therein as a corollary to this right, the partners are entitled to ask all those assets be converted into liquid money and the money so realized be applied for those purposes. Ordinarily this conversion is made by a sale of the partnership properties. In a suit for dissolution of a Firm, sale of the assets of the dissolved firm is the general rule. But the court has the power to mould the relief in



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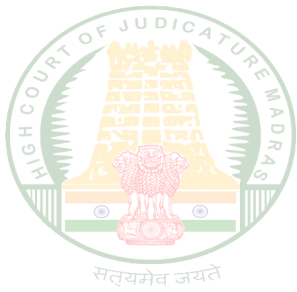


O.P.No.40 of 2019, etc., batch

accordance with the circumstances of the case. If the equities of the case so require the court has the power to direct that the properties be allotted to the partner who is willing to take them at a valuation fixed by the court and that the proceeds be applied for the purposes mentioned in 5 46 of the Indian Partnership Act. In Syers Vs. Syers (1876) 1 AC 174 at 1834, Lord Cairns, L.C. observed: "My Lords, it is very true as was said at the Bar, that on dissolving a partnership of this kind the ordinary course would be for the court to direct a sale of the assets, and, if necessary a sale of the concern as a going concern, and to give liberty for proposals to be made by either party to purchase it before the Judge in Chambers. My Lords, those provisions are moulded in every case by the Court to meet the circumstances of the particular case; it appears to me that looking at the nature of this business and looking at the very small interest which was taken in it by respondent it would certainly not be desirable in this case to have a sale, or to bring these premises to the hammer for the purpose of ascertaining what sum ought to be given for them. It is a case, therefore, in which, if a decree for dissolution has been made in the first instance, I apprehend that the court would have thought it right to authorise the owner of seven eighths of the concern to lay proposals for purpose before the Judge in chambers".

19.2 Dealing with the power of Arbitrator to make allotment of assets and properties of the dissolved Firm to one of the partners, the Calcutta High Court in that case further held as follows:

"On a reference of disputes in a suit of dissolution of a Firm, the Arbitrator has full power to make an allotment of the assets and properties of the



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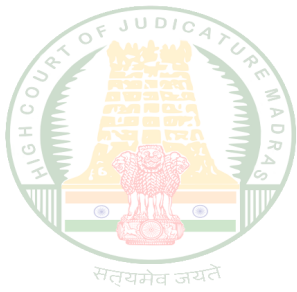
dissolved Firm to one of the partners at a valuation fixed by the Arbitrator. The Award in this case is therefore not in excess of the authority conferred on the Arbitrator. We are not concerned with the propriety of the allotment whether, on the facts of a particular case, the allotment to the appellants should have been made and if so, on what terms were matters entirely for the Arbitrator to decide."

20. The Madras High Court in Nagireddy Pothuraju Vs Missula Venkata Satyanarayana (AIR 1959 Madras page 686) relied on by Mr. C Harikrishnan, learned Sr Counsel for claimants 2 and 3, took a similar view. In that case, before the Madras High Court, the 1st defendant's interest in the partnership of a going concern (a rice mill) amounted to 4/5 share and the remaining 1/5 share belonged to the plaintiff, another partner. The 1st defendant was willing to purchase plaintiff's share at his own valuation. The lower court directed the sale of the entire going concern in order to ascertain and determine the value of the plaintiff's 1/5th share. The High Court held that the Court below would not be justified in ordering the sale of the entire going concern, in order to ascertain and determine the value of plaintiff's 1/5th share.

Following the principles laid down in Syers Vs Syers (1876) 1 AC 174 at 183, the Madras High Court further held as follows:-

"No doubt, the Court in a suit for dissolution of partnership has power to sell even a going concern. But when one partner has a greatly prepondering interest in the concern, his interests should be considered and any proposal submitted by him for the purchase of the shares of minor partners should be given serious consideration. In the present case, the first defendant has, I think, established his bona fides in going to the length of accepting the petitioner's own valuation of the mill

125/183



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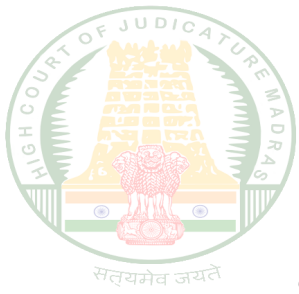
O.P.No.40 of 2019, etc., batch

at Rs.30,000/- given in his affidavit in support of his application. Neither side was able to agree on any independent person to value the mill. I do not think that in the circumstances the learned Subordinate Judge acted in accordance with settled principles in directing the entire mill to be sold in court auction at the instance of this minor partner. I have carefully considered the conflicting positions and I direct in modification of the lower Court order as the most equitable solution that the 1/5 share of the plaintiff to be sold in open auction with first defendant's starting bid of Rs.6,000, which the first defendant's Learned advocate says he is still willing to pay, namely, 1/5 of the plaintiff's own valuation of the mill. If there is any higherbidder, the plaintiff will benefit. This arrangement will not prejudice him in the least as he will be assured of his share of the mill on his own valuation.

21.1 Thus, the well settled and accepted method of dissolution is to convert the Partnership assets into money by selling partnership assets, even as a going concern and thereafter distribute the available surplus among the erstwhile partners in accordance with their shares.

Exception to this general rule can be made if circumstances of the case require the moulding of the relief to suit the special facts of a given case.

'Dinamalar newspaper has a history of over sixty years, having been founded in 1951: has earned goodwill and loyalty of the Tamil Public as a credible and reliable regional newspaper; owns the Trademark No. 302070 in Class 16 'Dinamalar'; has ten editions - Tirunalveli (1957), Trichy (1966), Chennai (1979), Madurai (1980), Erode (1984), Pondichery (1991), Coimbatore (1992), Vellore (1996), Nagarkofo (1998) and Salem (2001) covering the whole of Tamil Nadu; has a



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O.P.No.40 of 2019, etc., batch

combined circulation for all Editions of over eight and half lac copies per day as per the ABC figures for January - June 2013; is one of the top 3 Tamil dailies; has combined revenues of about Rs. 240 crores and profits before tax of about Rs. 40 crores, as per the last audited balance sheet, and Profit and Loss account for 2010-11; and has valuable land in Chennai, Trichy and Tirunelveli.

Prima facie the Dinamalar Enterprise, if sold as a going concern, subject to market conditions and the liabilities of the Firm should fetch a substantial sum perhaps running into several hundred crores. No one partner, each of whom has a twenty per cent share, has offered to, or is in a position to buy the shares of all other partners.

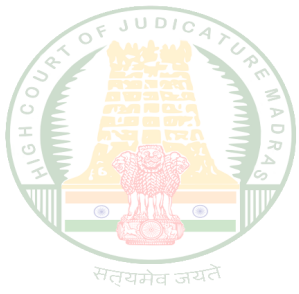
Although there are ten Editions, their circulation, revenue, profits, and extent of geographical area covered, vary. Four metropolitan editions currently under the management of Claimants, 2 and 3 account for nearly 70 per cent of circulation, Revenue and profits. Those claimants are adamant in wanting to have all those editions allotted to them, even though an equal division in value among the partners of the present going concern is not likely to be possible if that were to be done. The monetary compensation offered by these Claimants has been rejected by all other Claimants.

Claimant 5 has sought the sale of the Enterprise, or allotment to him of the editions desired by him. Claimant 4 also has sought the sale of the whole Enterprise in an auction among the Partners and their family members.

21.2 The 1 claimant in his written submissions dated 20.12.2013, suggested in the first place the mode of division of editions of Dinamalar newspaper between partners, based on

(a) circulation

(b) geographical area, bearing an opportunity for



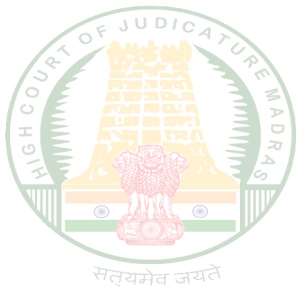
(c) potential growth

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In the alternative, the 1st claimant suggested that the division has to be done by going into the values of (a) the editions (b) the machinery and other movables and (c) immovable property (d) goodwill which includes business and trade marks and copyright. In paras 4.1 of his written submissions, the 1st claimant submitted that the larger picture is that partners seek to fend their own ways, and what portion of the firm they keep unto themselves and what excess they have to part with is perhaps the exercise which this Forum has to determine, for which the method is proposed in paras 4.2 to 4.6 of his written submissions / suggestions.

In para 5.1, the 1 claimant submitted that in the event of this Tribunal seeking to adopt a procedure based on valuation, the 1st claimant proposed the method of valuation as detailed in paras 5.1 to 5.6, para 6.1 and para 7.1 and 7.2 of his written submissions.

21.3 Claimants 2 and 3 In their written submissions/suggestions dated 27.12.2013 suggested that upon dissolution, claimants 2 and 3 may be jointly allotted Chennai, Coimbatore, Madurai and Puducherry editions along with their assets and liabilities as these editions have been under their possession, management and control continuously ever since inception for the reasons stated in the Annexure to their written suggestions. Further the claimants 2 and 3 in their written submissions/suggestions dated 27.12.2013 have given a proposal to retain the 4 editions under their control which according to them they have developed and also proposed to give monetary compensation of Rs 45 crores to be shared by claimants 1, 4 and 5, apart from all the claimants sharing the common assets of Dinamalar. Claimants 2 and 3 in the addendum dated 11.1.2014 to the proposal dated 27.12.2013 further stated that they would be willing to provide support to other Claimants at a mutually agreed cost, and under a MOU by giving their full editorial content, Jointly market advertisement



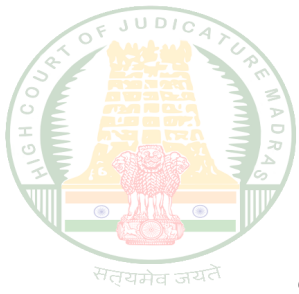
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space, and provide technical know how in other matters.

The offer so made by Claimants 2 and 3 have been rejected by Claimants 1, 4 and 5.

21.4 The 4th claimant in his written submissions/suggestions dated 4.1.2014 submitted that the existence and continuation of Dinamalar depends on the existence of all the editions together, as in the absence of all the editions the circulation of the newspaper would be reduced and consequently the advertisement revenue grossly affected. He further submitted that advertisement is the backbone for running the newspaper and its main source of revenue and if the editions are bifurcated and made independent, the circulation of Dinamalar newspaper as a single edition would dwindle and would become extinct in some regions. The further submission of 4th claimant is that for protecting the interests of one and all and also to save the newspaper Dinamalar from vanishing from the field of newspapers and also taking Into account the interests of the entire workforce, an auction be held among the Partners and their family members, after fixing a upset price based on the a valuation following the concept of EBDTA. By this, according to the 4 claimant, the firm Dinamalar as an enterprise can be saved and the partners who are not interested in the continuation of their editions can be relieved with their right share of money at right price. Claimants 2 and 3 have in their response doubted the bona fide of the 4 Claimant in suggesting an internal auction and they suspect that he is acting as the front for an outside investor, as according to them, there are giant newspapers and political parties ready to grab this well-established newspaper.

21.5 The 5 claimant, even while seeking the sale of the Enterprise as a whole, also gave his suggestions for division of editions, the details of which are given in his written submissions dated 22.12.2013. The 5th claimant also filed his objections



O.P.No.40 of 2019, etc., batch

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dated 19.1.2014 rejecting the suggestions of claimants 2 and 3 and seeking equal distribution of editions of Dinamalar between partners based on circulation, income or profit or area of operation.

22. There is no agreement among the partners as to the Edition which each of them is to be allotted if sale is not resorted to.

6.6.2 A perusal of the above award, particularly para 16, makes it clear that the Partnership deed do not provide any method for winding up of the partnership firm after its dissolution. Further, they have held that there is no agreement between the parties as to the methods that by which the accounts should be taken up, once the partnership firm is dissolved. Clause 21 of the Partnership deed deals with the method that by which the accounts should be taken up for valuation, etc., if the partners are retired after sometimes. Such provisions is applicable only for retirement and the same cannot be applied under the presumption or assumption in the course of winding up of the affairs of the firm. This is because no partner is entitled to take any advantage of appreciation of value of the assets to the detriment to other partners. In the event of retirement of any of the partners, certain methods of accounts, which

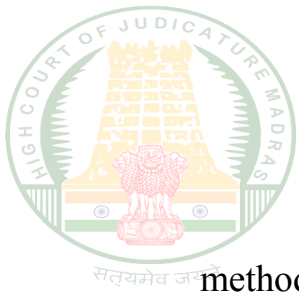


O.P.No.40 of 2019, etc., batch

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has to be followed, has been provided in the partnership deed with the inclusions and exclusion, for which the partners had agreed. Therefore, taking into consideration of all these aspects, a method of accounts has been provided in Clause 21 of the Partnership deed. The same cannot be followed in the course of winding up of the partnership firm, since in the present case, the firm has to be valued as a going concern as the firm is not going for winding up due to their inability to pay the debts or due to defunct or ceased to carry on business or carried on business only for winding up of the affairs of the partnership firm, but due to the dispute among the partners as a running concern.

6.6.3 In the course of winding up, before the settlement of debts of the firm, the Liquidator has to call for the claims from the third parties. Thereafter, they would adjudicate the same. After adjudication, the debts of the firm will be paid to the creditors. Apart from the above, the assets of the firm also be valued as a going concern. These are the procedures not required to be followed when a person is retiring from the firm. To avoid this step, a

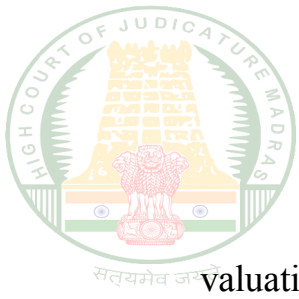


O.P.No.40 of 2019, etc., batch

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method for valuation, the partners of the firm have already propounded in the form of Clause 21 in the Partnership Deed to evaluate and thereafter to settle the share of the retiring partners.

6.6.4 Therefore, the approach adopted by the Tribunal that the procedure mentioned in Clause 21 of the Partnership deed equally apply for winding up is not in accordance with the provisions of Partnership deed, that was not the intention of the partners. If the same method what they follow under Clause 21 of the Partnership deed, at the time of retirement of partners, which they intend to follow in the course of winding up of the firm, certainly they would have reflected their intention in the partnership deed. Consciously the partners have not reflected the same in the partnership deed for the reasons stated above. So, in which case, unless and otherwise the partners have agreed for a particular method for valuation of assets, the mode of settlement shall be by following Section 48 of the Partnership Act. While following Section 48 of the Partnership Act in the present case, the Tribunal had decided the issues on the basis of equity, adopted the method for



O.P.No.40 of 2019, etc., batch

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valuation on their own choice, without the consent of partners of the firm.

Hence, the Tribunal acted upon beyond its jurisdiction and against the provisions of Partnership deed and Arbitration and Conciliation Act, 1996, whereby, the Tribunal had committed patent illegalities. Hence, the third interim award is also liable to be set aside.

6.6.5 In *Valliammai Achi and others vs. KN PL.V.Ramanathan Chettiar and others* reported in *AIR 1969 Madras 257* it was held that on dissolution of firm, the surplus assets of the partnership firm has to be sold and the sale proceeds has to be divided among the partners, according to their respective shares, after discharging the debts and liabilities of the partnership firm.

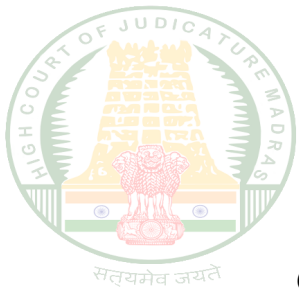
6.6.6 In the case of *Pannalal Paul vs. Padmabati Paul* reported in *AIR 1960 Cal P 693*, a Division Bench of Calcutta High Court had rejected the contention that the Arbitrator has no power to allot the assets and properties of the dissolved firm to one or more partners. Further in the said



O.P.No.40 of 2019, etc., batch

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judgement, it was held that if the equity of the case, so require, the Court has the power to direct that the properties be allotted to the partners who are willing to take them at a valuation fixed by the Court and that the proceeds be applied for the purpose mentioned in Section 46 of the Indian Partnership Act. No doubt, if the equity of the case so require the Court can very well have the power to direct the properties be allotted to the partners who are willing to take it at the valuation fixed by the Court. However, the same analogy would not apply for the Arbitrators for the present case in the current situation. The Division Bench had held that the Court has power to allot the assets and the properties, and if equity so required, the same can also be applied. Though it has referred the word “Courts” and the subject matters was against the award, this Court construed that the Court referred therein is the Arbitral Tribunal. Even assuming if it is taken into consideration, in the present scenario, there is a prohibition for application of equity and to adopt a method of their own choice by the Arbitral Tribunal, without consent of all the parties to the Arbitration agreement.



O.P.No.40 of 2019, etc., batch

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follows:

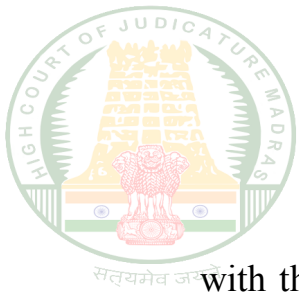
6.6.7 Section 28(2) of the Arbitration and Conciliation Act reads as

Section 28. Rules applicable to substance of dispute.—

(1)

(2) *The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorised it to do so.*

6.6.8 The above provision makes it clear that the Arbitrator is not empowered to act as *amiable compositeur* and direct the parties to take a particular division by application of equity, fairness and conscience, which is totally prohibited by the virtue of Section 28(2) of the Arbitration and Conciliation Act, 1996. The ***Pannalal*** case is of the year of 1960 and Valliammai Achi case is of the year 1969 and at that point of time, no such provisions similar to Section 28(2) of Arbitration and Conciliation Act, 1996 is available in the Arbitration Act, 1940. Therefore, the Court had decided based on then prevailing law of Arbitration. However, now the Arbitration law have been developed and the Arbitration and Conciliation Act, 1996 had come into force. As per the said Act, the Arbitrator is empowered to deal only



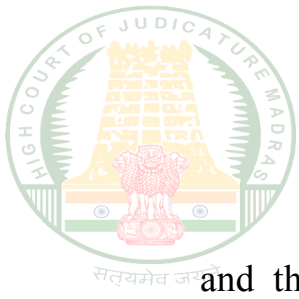
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with the dispute arising within the terms and conditions of the Contract and also with the parties to the Contract in accordance with law. The Arbitration and Conciliation Act, 1996 prohibits the Arbitrator to act as *amiable compositeur* without the express consent of the parties. In the present case, the parties have not given any such express consent for the method or manner of distribution of the assets as suggested by the Arbitral Tribunal and for winding up of affairs of the firm as well.

6.6.9 Consequent to the dissolution of the partnership firm, the Arbitrator had appointed the Chattered Accountant to audit the accounts. For the purpose of audit, the Chattered Accountant had adopted Discounted Cash Flow (DCF) method along with other methods. Further while appointing the Chattered Accountant, it was made clear that the method of allotment or any other event will be determined by the Arbitral Tribunal.

6.6.10 On maintainability, this Court had already decided that the Arbitral Tribunal cannot proceed with the winding up of the partnership firm



O.P.No.40 of 2019, etc., batch

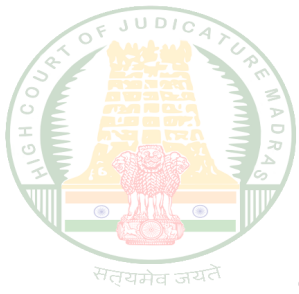
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and they cannot act as Liquidator. Even if it is held that the Tribunal is empowered to deal with the winding up of the firm, this Court would like to deal with the sanctity of the valuation method adopted in the present case, since the Arbitral Tribunal had appointed the Chattered Accountant to value the properties by choosing the particular method of choice of Arbitrators. Further they have also reserved their right to select the method of allotment of divisions. Once the Arbitrator had decided to go for winding up, they have to realize the assets and liabilities and distribute the same among the parties in general rule. When the Tribunal passed its second interim award dated 15.03.2014, at paragraph number 21.1 of the said award, it has stated as follows:

“21.1 Thus, the well settled and accepted method of dissolution is to convert the Partnership assets into money by selling partnership assets. even as a going concern and thereafter distribute the available surplus among the erstwhile partners in accordance with their shares.

Exception to this general rule can be made if circumstances of the case require the moulding of the relief to suit the special facts of a given case.

"Dinamalar newspaper has a history of over sixty years, having been founded in 1951; has earned goodwill and loyalty



O.P.No.40 of 2019, etc., batch

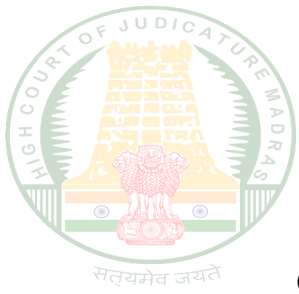
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of the Tamil Public as a credible and reliable regional newspaper; owns the Trademark No. 302070 in Class 16 'Dinamalar'; has ten editions - Tirunalveli (1957). Trichy (1966), Chennai (1979), Madurai (1980), Erode (1984). Pondichery (1991), Coimbatore (1992), Vellore (1996), Nagarkoil (1998) and Salem (2001) covering the whole of Tamil Nadu; has a combined circulation for all Editions of over eight and half lac copies per day as per the ABC figures for January June 2013; is one of the top 3 Tam!! dailies; has combined revenues of about Rs. 240 crores and profits before tax of about Rs. 40 crores, as per the last audited balance sheet, and Profit and Loss account for 2010-11; and has valuable land in Chennai, Trichy and Tirunelveli.

Prima facie the Dinamalar Enterprise, if sold as a going concern, subject to market conditions and the liabilities of the Firm should fetch a substantial sum perhaps running into several hundred crores. No one partner, each of whom has a twenty per cent share, has offered to, or is in a position to buy the shares of all other partners.

Although there are ten Editions, their circulation, revenue, profits, and extent of geographical area covered, vary. Four metropolitan editions currently under the management of Claimants 2 and 3 account for nearly 70 per cent of circulation, Revenue and profits. Those claimants are adamant in wanting to have all those editions allotted to them, even though an equal division in value among the partners of the present going concern is not likely to be possible if that were to be done. The monetary compensation offered by these Claimants has been rejected by all other Claimants.

Claimant 5 has sought the sale of the Enterprise, or allotment to him of the editions desired by him. Claimant 4 also has sought the sale of the whole Enterprise in an auction among the Partners and their family members."

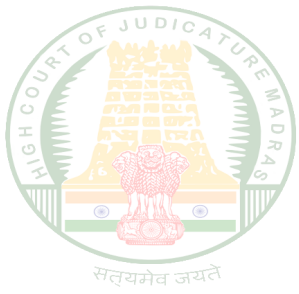


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6.6.11 At para 21.1 of second award it was held that *Prima facie* if the Dinamalar Enterprises is sold as a going concern, subject to the market conditions and the liabilities of the firms should fetch a substantial sum perhaps running into several hundred crores. No one partner, each of whom, has a twenty per cent share, has offered to, or is in a position to buy the shares of all other partners.

6.6.12 This was the findings of the Tribunal with regard to the sale of the partnership firm as a going concern. If it is sold as a going concern, it would have fetched several hundred Crores and whereas in the present case, the method adopted for valuation purpose is DCF method. The valuation will be arrived at based on the data available. More importantly, the goodwill of the firm was not at all taken into consideration. The brand value and value of other intellectual properties had also not been made. The historical data will provide only about the past activities and based on that only, the further projection can alone be made.

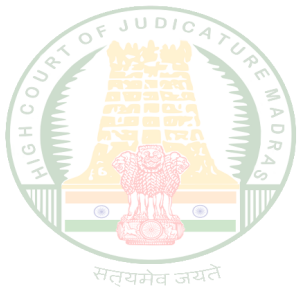


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6.6.13 Now the Arbitrator had allotted 10 editions to the 5 partners and their respective legal representatives, two each, based on the circulation and valuation. In the absence of valuation of goodwill, trademark and brand 'Dinamalar', it is improper for the Arbitrator to distribute the editions among the partners by applying the equity and adopting their own choice. The reason was that each edition will have its own brand value. The reputation will also vary from edition to edition based on the places where it has been circulating its newspapers and chance for improvement of future circulation of editions also matters, which depends upon the population of the localities. In a similar way, brand value, also matter and these aspect will have impact greatly while distribution of editions. Therefore without taking all these aspects into consideration and without valuing the goodwill, trademark and the brand image, the Tribunal had blindfoldedly chosen a valuation in non-application of mind and this Court is of the considered view that the same is beyond the scope of its jurisdiction and against the provisions of partnership deed and Section 28(2) of the Arbitration and Conciliation Act, 1996.

140/183



O.P.No.40 of 2019, etc., batch

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6.6.14 Further the said valuation is arrived at without any provisions in the agreement and the same is contrary to the provisions of the Partnership Act, particularly Section 54 and 55 of the Partnership Act. At any cost, the valuation arrived at by the Arbitral Tribunal by appointing the Chattered Accountant by adopting the DCF method is not the method to be followed in winding up of the affairs of the partnership firm when it is dissolved as a going concern and to distribute the residue in the form of cash or in the form of provision of editions to the parties concerned, in its own choice without agreement between the partners. However, the parties may agree any method, in any manner either to buy or sell any editions in between them on their own choice.

6.6.15 For all these reasons, this Court has no hesitation to hold that the method adopted for valuation and distribution of divison among the partners by the Tribunal is improper, illegal and thereby committed patent illegalities. Accordingly, this Court further hold that the Tribunal cannot



O.P.No.40 of 2019, etc., batch

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adopt the method and decide on its own in equity, fairness and conscience, when the partnership deed do not provide any method for winding up of the firm and there is no other agreement to the partners to permit the Arbitrators to act as a *amiable compositeur* by following their own methods of winding up and to distribute them the assets on their own choice. Hence, the third interim award is also liable to be set aside on this ground also. Accordingly, Issue No.VI is answered.

6.7 Issue No.VII:-

Whether the settlement of accounts of the firm from the year 1997-98 to 2010-11 is in accordance with the partnership deed and as per the provisions of Partnership Act?

6.7.1 This issue was raised by the fourth claimant. The fourth claimant mainly contended that the accounts has to be audited from the year 1997-98 till the date of issuance of dissolution notice and further submit that they are

142/183



O.P.No.40 of 2019, etc., batch

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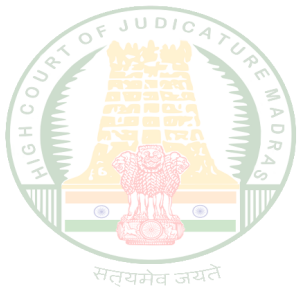
all not aware of the accounts for the other reasons assigned in the original petitions. This issue was elaborately discussed by the Arbitral Tribunal in its first interim award and the same is extracted hereunder:

6.7.2 In the first award, the issue has been dealt with at Paragraph Nos.34.5 to 34.17, which reads as follows:

“34.5: In the light of the contentions put forth by the Sr counsel for the 5claimant and the Sr. Counsel for the claimants 2 and 3, we have to consider the question whether there was settlement of accounts of the Firm for the years 1997-98 to 2010-11 between partners as contended on behalf of the claimants 2 and 3 and whether the 5th claimant is entitled to seek the relief of rendition of accounts in respect of the 4 editions of Dinamalar under the management of claimants 2 and 3 by re-opening the accounts already settled between parties for the years 1997-98 to 2010-11.

34.6: Clause 13 of the partnership deed (Ex V1) provides that proper and necessary books of accounts shall be kept at all the offices which should be thade available for inspection by all the partners whenever necessary. All the offices should periodically send statement of accounts to the central office as may be called for to maintain centralized account of the Firm and same shall be open for Inspection for all the partners. Clause 15 of the partnership deed (Ex V1) deals with the balance sheet for each year during the continuance of the partnership and It reads thus:

'For each year, during the continuance of the



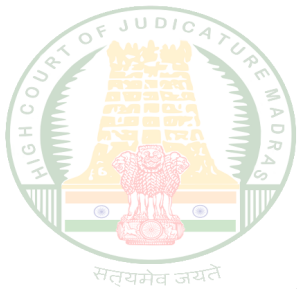
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O.P.No.40 of 2019, etc., batch

partnership a balance sheet as at 31" March shall be taken of all the assets and liabilities as on the date and profit and loss account for that year, if any, of the partnership according to the mercantile system of accounting. The net profit or less so ascertained, shall be divided between the partners according to the provisions. of this deed and the share of each partner shall be credited or debited to his current account'.

34.7: Exs K L 24A to 24.1 are the copies of the consolidated balance sheets of the Firm for the years 1997-98 to 2007-08 filed by claimants 2 and 3. The 1st claimant has also filed the coples of the finalized accounts of the Firm from 1999-2000 to 2006-07 marked as Exs V-16 and V-21. The claimants 1,2 and 3 have also produced the finalised accounts of the Firm for the years 2009-10 and 2010-11, In Book 6D which forms part of Exs K L 24 A to KL 24 | filed by claimants 2 and 3, we also find assessment orders passed by the Income Tax Department for the assessment years 2002-3, 2003-04, 2004-05 and 2006-07. Ex V 21 is the copy of the profit and loss account for the year 2006-07 in respect of the Firm filed by the 1" claimant. The 2nd claimant in his answer to On No 262 stated that the first 12 pages of the compilation (V21) have been signed by him. In col. 4 of page 3 of Ex V 21, we find that the net profit transferred from the various editions is shown. In answer to Qn No 267, the 2nd claimant has stated he has not disowned the signature in profit and lossaccount and that Ex v 21 has been prepared for Income Tax purpose and is an overall picture. Combined balance sheet for the years 2005-06 as on 31 March is found at page 1 of Ex KL 24 A and we find the profit and loss appropriation account for the year ending 31.3.2005 at page 3 and it reads as under:



O.P.No.40 of 2019, etc., batch

DINAMALAR-ALL EDITIONS

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PROFIT AND LOSS APPROPRIATION A/C FOR THE YEaR

31.03.2006

<i>Particulars</i>	<i>Y.E. 31.03.2006</i>	<i>Particulars</i>	<i>Y.E.31.03.2006</i>
<i>To tax paid for AY 89-90 & 91-92</i>	<i>1939.00</i>	<i>By IT refund for AY 1992-93</i>	<i>14756.00</i>
<i>To Income Tax paid for the AY 2003-04 & 6004-05</i>	<i>378658.67</i>	<i>By advance Tax AY 2006-07</i>	<i>1000000.00</i>
<i>To fringe Benefit tax Paid U4</i>	<i>2301266.00</i>	<i>By entry tax provisions</i>	<i>15503179.00</i>
<i>To Fringe Benefit Tax Paid U6</i>	<i>2701166.00</i>		
<i>To TDS receivables</i>	<i>944340.00</i>		
<i>To Advance tax Asst. year 2006-07</i>	<i>39964527.00</i>		
<i>To Net Loss Transferred from</i>		<i>By net profit transferred from</i>	
<i>Central Office</i>	<i>115115811.22</i>	<i>Chennai Office</i>	<i>5562897.22</i>
<i>Mercury Office</i>	<i>14042200.40</i>	<i>Pondicherry Office</i>	<i>7377245.07</i>
<i>G.K.Road Office</i>	<i>4916543.25</i>	<i>Erode Office</i>	<i>18772500.80</i>
<i>Vellore Office</i>	<i>822503.48</i>	<i>Salem Office</i>	<i>11824940.77</i>
		<i>Coimbatore Office</i>	<i>17451337.43</i>
		<i>Trichy Office</i>	<i>31884913.64</i>
		<i>Madurai Office</i>	<i>23675679.70</i>
		<i>Tirunelveli Office</i>	<i>18062088.97</i>
		<i>Nagercoil Office</i>	<i>8848139.55</i>
<i>Net Profit transfer to partners current A/C</i>			

145/183



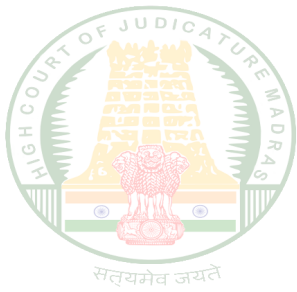
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Particulars	Y.E. 31.03.2006	Particulars	Y.E.31.03.2006
Sri Venkitapathy	16477744.63		
Sri R.Krishnamurthy	16477744.63		
Sri.R.Lakshmipathi	16477744.63		
Sri.R.Raghavan	16477744.62		
Sri.R.Sathiamurthi	16477744.62		
Total	159977678.15		159977678.15

For Dinamalar
Sd/-
Partner

The above statement is signed by the 2nd claimant as a partner. We find from page 3 of Ex KL 24A that net profits are transferred from all the Dinamalar offices except Vellore office and the net loss transferred from Central office, Mercury office, G K Road office and Vellore office. We also find that net profit of Rs.1,64,77,744.63 was transferred to the current account of each of the partner. There is similar combined balance sheet for the other years upto 31.3.2011. The 2nd claimant in his answer to the question by the Tribunal has explained as to how Auditor Marimuthu prepared the balance sheet and Sec 44 AB report as under:

"The accounts of each edition is audited by SafRagavendra& Co of Trichy except Erode and Salem editions and those editions are audited by a different Auditor. Sal Ragavendrat co audits individual office by sending their office assistants to each office and they go through the accounts and they prepare monthly profit and loss account of each edition. In that report they give details about newsprint consumption. Circulation, No of



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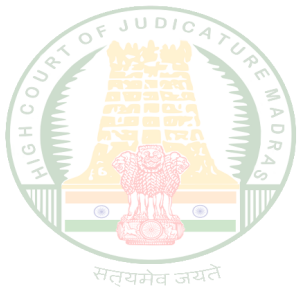


O.P.No.40 of 2019, etc., batch

pages printed, details about dishonoured cheques and their collection, drawings by partners, loans given to the staff and other details. This audit is overall gives a good picture of the performance of each edition. They also given the circulation figures and also whether the circulation has increased or fallen. From that statement we can find the drawing of each partner. After the accounting year is over closing entries are made on the books of each office and final figures are arrived by the accountant of each office and during finalization all the books are taken to Tirunelveli and team of audit assistants sit down along with Mr.Marimuthu office staff and finalize the account of each office. They may sometime disallow some of the bad debts saying the Income Tax Officer will not allow as expense. The profit and loss account of eight editions are prepared by Saf Ragavendra Co and they submit the same to Mr.Marimuthu for final audit. As far as Erode and Salem editions are concerned, I do not know how it is done at Tirunelveli, After the preparation of profit and loss account of each edition, the figures of all the ten editions are combined together and final profit and loss of the Firm is arrived at. Mr.Marimuthu goes through these figures and prepares Section 44 AB report and files the Income Tax Returns.

The assessment order for the assessment years 2006-07 dated 31.12.2008 is found at page 1 book 6 C which forms part of Exs KLA to KLI, filed by claimants 2 and 3 and it is stated therein that the assessee is a Partnership Firm constituted by five partners, sharing the profit and loss of the business in equal ratio. They are:

Dr R Venkitapathy (ind)



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O.P.No.40 of 2019, etc., batch

Sri R Krishnamurthy (HUF)

Sri R Lakshmipathy (HUF)

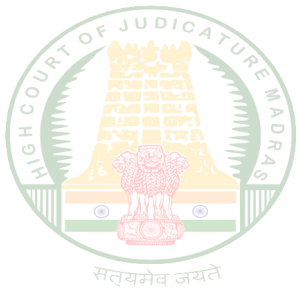
Sri R Raghavan (HUF)

Sri R. Sathyamurthy HUF)

It is further stated that the assessee Firm is carrying on business in publication of a Tamil daily newspaper known by its name. We also find similar assessment order passed by Income Tax Department for the years 2002-03, 2003-04 and 2004-05 in the Book No 6D which forms part of KL 24A to 241 filed by claimants 2 and 3. They have also produced the assessment orders passed by the Income Tax Dept for the financial years 2007-08, 2008-09 and 2009-10.

34.8.1: The settled position of law is that the accounts settled between the parties will not as a general rule be permitted to be taken again. In Joghee Gounder Vs Lingamal& Others (SA 106/73 Judgment dated 12.6.1975) reported in 1975 TLNJ page285, the Madras High Court,, while dealing with the question when the account could be challenged and reopened, observed as follows:

"S.9 of the Act (Partnership Act) provides that partners are bound to render true accounts and full information of all things affecting the firm to any partner or his legal representatives. The ordinary rule is that in asuit for partnership accounts, unless it is shown that there has been an adjusted account at a later date, the account of dealings and transactions of the firm begin from the commencement of this partnership, However accounts settled between the parties will not as a general rule be permitted to taken again and that settled accounts and those which have been agreed between the parties, either expressly ar by conduct, as correct, and which they are therefore not permitted subsequently to reopen without special reasons. The right to have an account taken from time to time of



O.P.No.40 of 2019, etc., batch

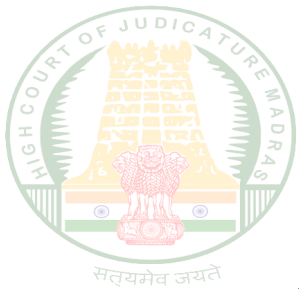
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the commencement of the Firm may also be lost in case there has been acquiescence on the part of the partner. A partner will be deemed to have acquiesced particular accounts as being correct or in particular items as being chargeable or not chargeable to the Firm if from his acts or conduct he must be regarded to have accepted the same to be so treated. Where it appeared that one of the partners having a right to examine the accounts did not for a number of years, exercise that right, it was held that unless fraud was established in purchases and sale in respect of the business by the working partners could not be challenged: (Vide) (1914) 1. LR 41 Cal.771 Desal on partnership 3 Edn 301. Settled accounts will be reopened in total, in case of fraud even after a lapse of considerable time (Vide) Lindley partnership 13 Ed. 535.

34.8.2: Dealing with the question what are stated or settled accounts, in a decision of the Bombay High Court in Maneklal Vs Jhwala But, Chagia J, (AIR 1947 Bombay page 135) held as follows:-

"Now what are stated or settled accounts (#283): If accounts are submitted and if they are accepted as correct by the other side to whom the accounts have been rendered, then in law you have stated or settled accounts. It is not necessary that the statement of accounts need be in writing, nor is it necessary that parties should sit down, compare the accounts and call for vouchers, etc. All that the Court has got to ascertain is whether in fact the party to whom accounts were rendered has accepted those accounts as correct. The acceptance need not be express. It can be inferred from conduct....."

The learned Judge to that case proceeded to deal with certain decisions. Referring to Willis V. Jeernegan (1741, 2 ATK



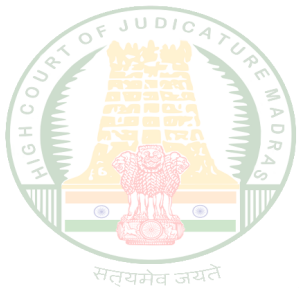
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251), he pointed out in that decision, the Lord Chancellor who was dealing with a similar question observed that there was no absolute necessity that the accounts should be signed by the parties who had mutual dealings to make it a stated account, for even where there were transactions, suppose between a merchant in England and a merchant beyond the sea, and an account transmitted to England from the person who was abroad, it was not the signing which would make it a stated account but the person to whom it was sent keeping it by him for a length of time without making any objection which should bind him and prevent his entering into an open account afterwards. The learned Judge also referred to another English case, where the view was taken that it was the rule of the court that where a merchant kept an account by him for about two years without objection, the Court would consider that the account were settled or stated.

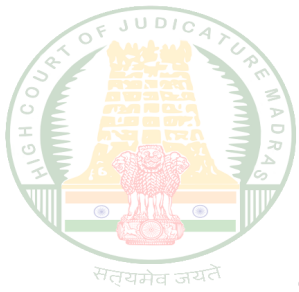
34.9: In view of the facts present in this case and contentions of the counsel for the parties and the position of law stated above, the question we have to consider is whether there was settlement of accounts as per the balance sheets of the Firm for the years 1998-99 to 2010-11 between partners, and if it is so, whether there are grounds for re-opening the settled accounts and grant the reliefs of rendition of accounts as claimed by the 5th claimant in cs 640/05, C S 22 of 2005, C s 119/2005 and in the claim statement of 5th claimant.

34.10: The copies of the balance sheet of the Firm for the years 1999-2000 to 2006-07 are produced by the 1st claimant and they are marked as Ex V-16, and V21 from which it is clear that the partners have copies of the balance sheets for the years in question and they had knowledge of the contents of the balance sheets of the Firm. In his answer to Qns 214, 215, 216 and 217, the 1st claimant had admitted in his cross examination



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that Exs K L 24 A to 24 | are the balance sheets of the Firm for the year ended 31.3.1997 to 31.3.2005, that profits shown in the balance sheets were credited in the current account of the partner for their respective share of profits, that all those balance sheets were filed before IT authorities along with income tax returns of the Firm and they are audited by and certified by a Chartered Accountant. The 5th claimant in his answer to On No 15 admitted that he had drawn his share of the profits of the Firm which includes Coimbatore edition profit, from 1997 up to date. The production of the balance sheet Ex 54155 the 5th claimant shows that the 5 claimant had the knowledge of the balance sheets. As pointed out by the learned counsel for claimants 2 and 3 that it he been brought out in evidence that all the parties submitted the account relating to the editions under their control to the Audit office maintained at Tirunelveli and the Auditor Marimuthu visits this office only, makes all audit arrangements for the audit of accounts books and vouchers of all the ten editions, their central office, their Mercury News Office, G K Road, news office and Egmore Advertisement office and prepares Section 44 AB report and files the Income Tax return. The counsel for the 4th claimant, during the cross examination of the 2nd claimant confronted the 2h claimant with the drawing statements duly certified by the Auditor Marimuthu for the period 1997-98 to 2006-07 and asked the witness whether he admit the document. The witness admitted the documents and the drawing statements were marked as Ex RR 6 (5 pages) series. Ex RR 7 series are the copies of the ledger entries of each partner for the period 1997-98 to 2006-07 corresponding to Ex RR 6 statement produced on behalf of 4th claimant and marked through the 2nd claimant. It is clear from Ex RR6 and Ex RR7 series produced by the 4th claimant during the cross examination of the 2nd claimant that the 4th claimant was fully aware of the balance sheets prepared by Auditor Marimuthu and it was accepted by the 4th claimant. It is seen from Ex V14, the special audit report dated 29.3.2004 for the year ended 31.8.2001, and Ex V15, and the audit



O.P.No.40 of 2019, etc., batch

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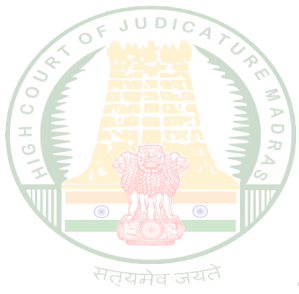
observations dated 30.3.2005 for the period ended 31.3.2002 that the balance sheets as well as the audit reports Ex V14 and V15 were communicated to all the partners. The 1st claimant's answer to Qn No 248 in his cross examination is relevant and Qn and answer to Qn No 248 read as under:

"Q No: 248: Was it hot the practice of the Auditor P Marimuthu to send copies of the returns of the Firm which were filed with Income Tax to each of the partners?

A: He will send the copies to all the partners.

In the present case, the balance sheets prepared by Auditor Marimuthu were never objected by any of the partners. We find from the consolidated balance Sheets of the Firm for the years 1997-98 to 2010-11, net profits are transferred to the current account of each partner, in each year. Ex K L 54 Is statement signed by auditor Marimuthu, giving details of drawings of partners from the year 1996-97 to 2006-07. We find from Ex KL 54, that out of the profits of the Dinamalar Firm each partner has withdrawn amounts during the years 1997 to 2000. The 5th claimant had not denied the suggestion put to him in Q No 170 In his cross examination to the effect that as per Ex K L 54 for the years 1996-97 to 2006-07, he had drawn Rs.1685.67 lakhs as personal drawings, but only wanted time to verify the balance sheets. In his answer to Qn No 305, he admitted that the drawings shown in Ex K L 54 are correct. The evidence referred above clearly establishes that all the claimants have the balance sheets of the Firm, that they have the knowledge of the accounts of the Firm and that they have not disputed the correctness of balance sheets, giving details, stating that the particular entry in the balance sheet is not correct, either in the proceedings before the High Court in C S 22 of 2005; C.S. 119 of 2005 and C.S. 640 of 2005 or in this arbitration proceedings.

34.11: Thus the conduct of all the partners including



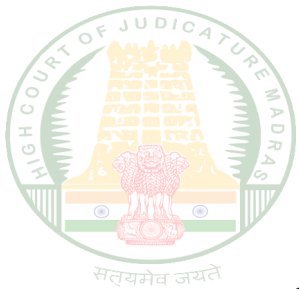
O.P.No.40 of 2019, etc., batch

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claimants 1, 4 and 5 in not having raised objections at any time to the balance sheets prepared by the common Auditor Marimuthu but withdrawing their share of the profits credited in the current account as shown in the balance sheets prepared by Marimuthu for the years in question, in our view clearly amounts to sufficient acquiescence on the part of claimants 1, 4 and 5 and acceptance of the accounts stated in the balance sheet of the Firm prepared for the years 1998- 99 to 2010-11 which formed the basis of the income tax returns submitted by the Firm and therefore the accounts for those years already settled in our view cannot be reopened.

34.12: Now let us consider the evidence produced by the 5th claimant in the form of documents Exs 5.15 to S.17, S-32 to 5-38 and Exs V-14 and V-15, and examine whether the 5th claimant has proved his case that there was diversion of funds of Dinamalar Firm to KalaiKathir newspaper, that there was manipulation of the records, other irregularities and fraud committed by claimants 2 and 3, making cut special reasons for reopening the accounts already settled between the partners by the preparation of combined balance sheets for the Firm for the years 1997-98 to 2010-11 on the basis of which Income Tax was paid by the partnership Pem to the Income Tax Department for the years in question.

34.13: The learned Sr counsel for the 5 claimant strongly relied on the Special Report - Audit dated 29.3.2004 for the year ended 31.3.2001 marked as Ex V 14 and the audit observations dated 3.3.2005 (EV 19) support of his contention for directing claimants 2 and 3 to render accounts for editions in their charge from 1997 and reimburse the amounts siphoned off by them to KalaiKathir. Ex V14 is the Special Report - Audit for the year end 31.3.2001 dated 29.3.2004. it is seen from para 1 of the report that the Audit Report under Section 44 AB of Income Tax



O.P.No.40 of 2019, etc., batch

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Act 1961 was given by Auditor Marimuthu on 29.3.2004 for the year ended 31.3.2001 and revised Return of Income for the Assessment Year 2001-02, considering the report under Section 44 AB was submitted on 31.3.2004. Para 2 of Report read as unders "Apart from my Report under Section 44 AB of the Income Tax Act, 1961, I give my personal observations in the accounts for the period ended 31.3.2001 The following are the main dispute among the partners relating to the account of Group Advertisements:

1. Excess credit notes are being given in the Group advertisements

by the person who is in charge of Group advertisements.

2. The excess credit notes are for the purpose of giving advertisement in Kalalkathir run by the family members of the two partners. The person who is authorizing credit note is one of the family members running KalaiKathir.

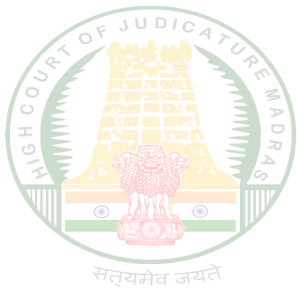
3. The offices of the Group advertisement centres, staff and other assets of Dinamalar are being utilized for the development of KalalKathir in getting advertisement, news, etc, at the cost of Dinamalar.

4. The cheques received by group office are being sent to other branches instead of crediting in the bank account of the group office. The receipts were not given to the customers for the cheques received by the group office.

5. Na proper account is being maintained for advertisements under Barter System. Advertisements by Kalakathir are being adjusted in the Barter Transactions of Dinamalar.

6. The Rate of Ink purchased from the concerns of the partners and the scanning charges given to the concerns of the partrers are too high when compared to the Rates and Charges of the other parties in the market.

154/183



O.P.No.40 of 2019, etc., batch

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To ascertain the facts of the above disputes, I wrote a letter to the Firm, with a copy to all the partners calling for the following particulars for which no reply was received from any one of the partners." We have already extracted the particulars required by the Auditor in para 33.6 of this Award.

As already pointed out in answer to Qn No 273, the 5th claimant has admitted that he has not furnished the particulars required by the Auditor Marimuthu in para 2 of his report Ex V-14.

In his answer to Q No 283, the 5 claimant has admitted that apart from Exs V-14 and V-15, the Auditor Marimuthu has not given a similar report either for the previous years or for the subsequent years. He stated that misappropriation took place in those 2 years and he has given the report V-14 and V-15.

In his answer to Q No 284, the 5th claimant has admitted that the Auditor has given the report V-14 and V-15 at the request of the 1st, 4th and 5th claimants.

It is also necessary to consider the evidence of the 1st claimant with regard to the documents Ex V-14 and V-15 by way of his answers to QnNos 243 to 254 in his cross-examination which reads as under:

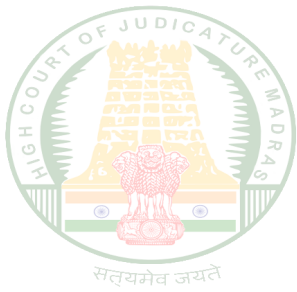
Q No 243: From 2004 till the time you filed the case you never thought to verify the Audit observation is correct or not?

A: I have full faith in our Auditor and therefore I took it as correct.

Q No: 244: Is not Auditor Mr P Marimuthu, the Auditor for your personal business?

A: Yes. He is the Auditor for one of my personal businesses and feel sorry for people casting aspersions on his character.

Q No 245 : Please read aloud the first line of the Audit



O.P.No.40 of 2019, etc., batch

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report.

A: witness reads aloud the first line of the Audit report.

Q No: 246: Therefore the Auditor has already completed and given his report to the Income Tax.

A: He has submitted his report under section 44AB and counter signed by claimant 2 That report does not contain the mismanagement of the editions under their control.

Q No 247: You please look into report once again, in the first paragraph it says revised return for assessment year 2001-02 relating to the accounting year 31.3.2001 considering my report under section 44AB. Therefore revised return was filed to the income tax for the assessment year 2001-02.

A: I have no idea about the revised returns stated above.

Q No 248: Was it not the practice of the Auditor P Marimuthu to send copies of the returns of the Firm which were filed with Income Tax to each of the partners?

A: He will send the copies to all the partners.

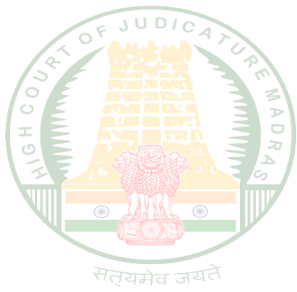
Q No 249: Therefore is it your statement about the revised return made earlier that you have no idea cannot be true?

A: The revised return, was kept in Tirunelveli Office. We have an internal auditor Muthu. He used to keep all the records intact.

Q No 250 : Please see the second para of the report that the Auditor gives his personal observation apart from report under Section 44AB.

A: Yes.

Q No 251: Did you ask him what was the need for giving his personal observation after, (1) after giving report under section 44AB and (2) after filing the income tax return of the Firm.



O.P.No.40 of 2019, etc., batch

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A: We have all the ledgers of different office brought to MrMarimuthu's office. Then we asked for personal management report. The management report is entirely different from the 44AB report. Then only the management report is given after looking into various entries of the ledger. Q No 252: You have made use of an expression 'We asked' in your earlier answer above. Who are 'we'?

A: We three people. That is claimant No 1, 4 and 5.

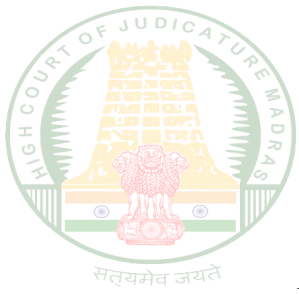
Q No 253: Have you got any copy of the letter addressed to the Auditor?

A: I have no idea about it.

Q No 254: Is not Auditor Marimuthu, the personal auditor of the 5th claimant ?

A: Yes. He has so many clients and the 5 claimant is also one among them.

No doubt in the reports Ex V-14 and V-15, certain irregularities a painted out in the maintenance of accounts of the editions under the control of claimants 2 and 3 for 2 years covered by Exs V-14 and V-15. On a careful consideration of the nature of irregularities pointed out in Ex V14 and V15 for the 2 years, we are of the view that the irregularities pointed out by the Auditor in Ext V-14 and 15 do not constitute special reasons warranting the re- opening of the accounts settled between the partners by the preparation of balance sheets for the years 1997-1998 to 2010-11 on the basis of which the income tax returns for the years in question were filed for the partnership. As pointed by the learned Sr counsel for claimants 2 and 3, the assessments have been completed upto the accounting year 2006-07 relating to the assessment year 2007-08 and the Income Tax Department should have taken cognizance of the audit remarks given by the Auditor while making assessment of the Firm and that there is no action initiated by the Income Tax



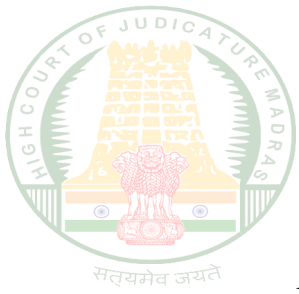
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O.P.No.40 of 2019, etc., batch

Department on the audit remarks in Ex V-14 and V-15 and assessments have been completed as stated above. It must be also pointed out here that the irregularities pointed out in the Special Audit report, Ex V-14 and V15 were relied on by the 5) claimant in support of the various items claims amounting to Rs.79.51 crores made by him against claimants 2 and 3 in para 51 of his claim statement. We considered the claims under items 1 to 11 of the claims made by the 5th claimant mentioned in para 51 of the claim statement of 5th claimant and we have found in para 33.7 of this Award that the 5th claimant has not produced any acceptable evidence to substantiate the claims made under various items 1 to 11 in para 51 of the claim statement and that Special Audit Reports Ex V-14 and V-15 do not in any event go to prove the quantum of loss to the extent of 70.51 crores caused to the Dinamalar Firm by claimants 2 and 3 as contended by the 5th claimant in para 51 of his claim statement.

34.14: In support of the case of the 5th claimant that there was diversion of funds, men and materials from 4 editions of Dinamalar Firm under the control of claimants 2 and 3 to KalatKathir newspaper with the help of claimants 2 and 3 and caused loss to the extent of Rs 70.51 crores, the learned Sr counsel for the 5th claimant also placed reliance on the documents Exs S-15,S-16, 5-17, 5-23 and Exs 5-32 to 35. We have examined and dealt with in detail the documents Exs 5-15, 5-16, 5-17, 5-23 and Exs 5.32 to 5.38, and found in para 33.4 of this Award for the reasons stated therein that the said documents are not helpful to prove the loss to the extent of Rs 70.51 crores as claimed by the 5 claimant in para 51 of his claim statement and his further case regarding diversion of funds from Dinamalar Firm to KalatKathir newspaper, y the absence of any other acceptable evidence, it is not possible to come to the conclusion that the funds, men and materials from Dinamalar Firm wert diverted to the KalalKathir newspaper at the instance of claimants 2 and 3, on the basis of certain observations in the

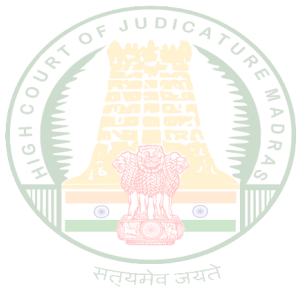


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Audit Reports Exs V-14 and V-15. AS already pointed out, on the basis of the Irregularities pointed out in the Special Reports of Auditor In Exs V-14 and V-15, regarding maintenance of accounts of the editions under the control of claimants 2 and 3, the 5th claimant has come forward with specific items of claims in items 1 to 11 in para 51 of his claim statement against claimants 2 and 3 for damages to the tune of Rs.70.51 crores and in para 33.7 of this Award, we have found that the irregularities pointed out in Exs V-14 and V-15 do not go to establish the loss of Rs.70.51 crores pleaded by 5th claimant in para 51 of the claim statement. That being so, in our view, the same irregularities pointed out in Exs V-14 and V-15, cannot be urged by the 5th claimant as the grounds for directing claimants 2 and 3 to render accounts for the 4 editions under their control from 1997 as prayed for In the claim statement of 5th claimant. Further, we have also noticed earlier that Auditor Marimuthu prepared the reports Exs V-14 and V-15, giving his personal observations only for two years, apart from his report under Sec 44 AB of IT Act, at the request of claimants 1, 4 and 5, even though the claimants 1 to 5 did not send any reply giving the particulars required by Auditor in his letter dated 2.2.2004 (Ex S 23) and that the Auditor who gave the report Ex V 14 and V-15 giving his personal observations has not even been examined as a witness in this case and th such circumstances much reliance cannot be placed on the reports Exs V14 and V15, as proof of the claim of Rs.70.51 crores made in para 51 of the claim statement of he 5th claimant.

34.15: As stated earlier, Courts have held that in a suit for partnership accounts, settled accounts between partners will not as a generalrule be permitted to taken again, that settled accounts are those which have been agreed between the parties, either expressly or by conduct, as correct, and that the parties to such settled accounts are not permitted subsequently to reopen the settled accounts without special reasons. The Supreme Court



O.P.No.40 of 2019, etc., batch

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in Garden Woodroffe & Co Vs S KMA Majida Co (AIR 1967 SC page 181) held as follows:

The legal position is that the accounts are settled or stated if they are submitted and accepted as correct by the other side to whom the accounts have been rendered. Such a statement of accounts need not be in writing, nor is it necessary that before the accounts are settled, they should be gone into by the parties and scrutinized and supported by vouchers. It is sufficient if the accounts are accepted and such acceptance may be inferred by conduct of parties. As observed in Dantell's Chancery Practice, eighth edition, Vol. 1, D 419, the mere delivery of an account will not constitute a stated account without some evidence of acquiescence which may afford sufficient legal presumption of a settlement. There is also the following passage in Bullerh and Leake's Precedents of Pleadings ninth edition, p.584: it is not enough for the accounting party merely to deliver his account; there must be some evidence that the other party has accepted it as correct. But such acceptance need not be express, contemporaneous or subsequent conduct may amount to a sufficient acquiescence."

34.16: In the present case, as already pointed out there is clear evidence of acquiescence and acceptance of the accounts already settled in that the claimants 1, 4 & 5 have the balance sheet of the Firm, that they have the knowledge of the accounts of the Firm and that they have not disputed the correctness of balance sheet, giving details stating that the particular entry in the balance sheet is not correct, either in Civil the suits C.S. 22 of 05, C.S. 119 of 2005 and C.S. 640 of 2005 on the file of High Court, Madras, or in this arbitration proceedings. There is also clear evidence of the 1st claimant in his answer to QnNos 214 and 215 to the effect that the profits shown in the balance sheets were credited to the current account of the partners for their respective shares and that it is also seen from Ex K L 54 that out of the profits credited in the current account of partners, each of



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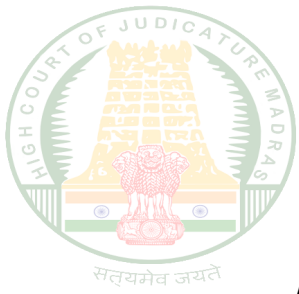
them have withdrawn amounts during the years in question. It is clear from such conduct of the parties that they have accepted the accounts settled as per the combined balance sheet prepared upto the year 2010-2011, Though the 5 claimant allege fraud, manipulation of accounts and irregularities, and mistakes in the maintenance of accounts of the 4 editions managed by claimants 2 and 1. he has not proved the same by adducing acceptable evidence making out special reasons for re-opening the accounts settled upto the year 2010-11 as reflected In the balance sheet of the Firm upto the year 2010-11 and for requiring the claimants 2 and 3 to render accounts for the period from 1997-1998 till date.

34.17: For all the reasons stated above, we come to the conclusion that there was settlement of accounts between the partners as per the balance sheets of the Firm for the years 1997-1998 to 2010-2011 and that the 5th claimant has not made out special reasons for re-opening the accounts settled already, and for seeking the relief of rendition of accounts by claimants 2 and 1 for the editions of Dinamalar under their management for the years 1997-98 till date, as claimed in the Civil Suits 22 of 2005, 119 of 2005 and 640/05 and in the claim statement filed in the present arbitration proceedings.

6.7.3 In the second award, the issue has been dealt with at Paragraph

Nos.14.10.1 to 14.10.6, which reads as follows:

14.10.1 Now let us examine whether the 4th claimant has made out a case for the appointment of an independent Auditor for the purpose of special audit of the editions of Dinamalar as claimed by him in his applications dated 15.11.2010 and 11.1.2013. The 4 claimant in his application dated 15.11.2010 prayed for the appointment of a Chartered Accountant for the



O.P.No.40 of 2019, etc., batch

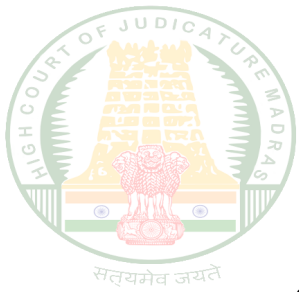
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purpose of special audit of editions of Dinamalar under the management of claimants 2 and 3, firstly on the ground that the accounts with regard to the areas pertaining to Dinamalar.com, Dinamalar e-paper, Dinamalar on mobile and Kalvimalar.com have not been rendered by the 2nd and 3rd claimants. The contention put forth on behalf of the 4th claimant is that it has been brought out in the course of cross examination of the claimants 2 and 3, that the various income generated by the Firm through the editions under the control of the claimants 2 and 3 had not been brought to book and several heads of accounts shown in expenditure cannot be included in the accounts of the Firm and that some of the instances which had come to light in the cross examination of claimants 2 and 3 in regard to the manipulation of accounts by claimants 2 and 3 are as follows:-

- (a) Accounts pertaining to Dinamalar.com*
- (b) Dinamalai e-paper*
- (c) Dinamalar on mobile and*
- (d) Kalvimalar.com*
- (e) Marketing/circulation*
- (f) Advertisements and*
- (g) Events and exhibitions.*

In para 8 of the additional claim statement dated 1.9.2012, the 5th claimant has also raised similar contentions regarding manipulation of accounts by claimants 2 and 3 with regard to (a) Dinamalar.com, (b) Dinamalar e-paper, (c) Dinamalar.net, (d) Dinamalar.org. (e) Kalvimalar, (f) Shoppers Mart and (g) Valikatti in support of his plea for appointment of an auditor to conduct special audit of all editions of dinamalar.

The case of claimants 2 and 3 is that whatever income



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O.P.No.40 of 2019, etc., batch

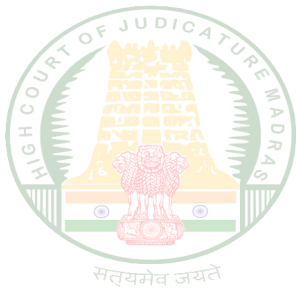
generated from Dinamalar.com, Dinamalar e-paper, Dinamalar on mobile and Kalvinalar.com have been included in the group advertisement income and the same has been audited. To the question No 207 put to 3d claimant in his cross examination by the counsel for the 4th claimant "How do you categorize the websites, e-paper, Dinamalar on mobile", the 3 claimant answered as follows:

"It is part and parcel of the Firm Dinamalar. Whatever that is printed in the daily newspaper of Dinamalar is the e-paper in the website. Same thing is also in the mobile. As and when an important news emanates it is flashed in the website and also in the mobile."

It is seen from the evidence of the 3rd claimant in the form of his answers to QnNos 207 to 218 that roughly the average income generated from web-sites, e-paper, Dinamalar on mobile and international satellite edition was one lakh in the beginning which grew to Rs 70 to 80 lakhs per annum as on the date of his giving evidence. The answers to QnNos 215 to 218 given by the 3rd claimant in his cross examination are relevant and they read as follows:-

"Q No 215: In which edition's account is the income from these websites, e-paper, Dinamalar on mobile and international satellite edition are included?

A: It is under U4 account which consists of Chennai, Madurai, Coimbatore and Puducherry editions. Eventually it is merged with the entire advertisement account in the consolidated balance sheet which is prepared and submitted to the Income Tax department. For the information the entire profit that is generated in these account as well as other group advertisement account is enjoyed by the other three partners without raising their little finger.



O.P.No.40 of 2019, etc., batch

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Q No: 216: My question is the reflection of the day to day income and expenditure in relation to these website, e-paper etc. in which individual editions accounts. Your answer is that it is available in the consolidated accounts of the four editions viz. Chennai, Coimbatore, Madurai and Puducherry, I would request you to give a specific answer mentioning the actual edition in which it is included prior to the consolidation of U4 editions' accounts.

A: Under U4 there are individual edition accounts and there is one combined group advertisement accounts. Under that heading of group advertisement accounts the so called revenue generated under e paper etc. is merged.

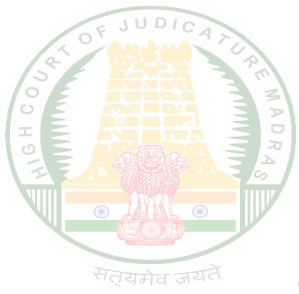
Q No: 217: How do you show the expenditure in relation to the management and administration of the websites, e-paper, Dinamalar on mobile and international satellite edition?

A: It is very simple. Whatever the yardstick we adopt to collect local and group advertisement for our regular newspaper, the same yardstick is used in relation to the above accounts.

Q No 218: Do you mean to say that the income and expenditure in relation to the websites, e-paper, Dinamalar on mobile and international satellite edition are shown as one unified account merged with local group advertisement income and expenditure of the U4 editions ?

A: Yes. I think so.

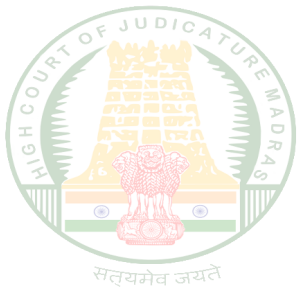
14.10.2 The case of the 4th claimant with regard to "events and exhibitions" is that the events and exhibitions conducted annually by the Firm is sponsored by one company or the other and the profits from the entire proceedings ought to be reflected in the accounts of the Firm, nevertheless the major portion of the same is credited to the account of M/s Lakshmi and Brothers, a concern launched by the sons of the 2nd and 3rd



O.P.No.40 of 2019, etc., batch

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claimants under the aegis of the 2nd and 3rd claimants for siphoning profits. According to the 4th claimant, the entire manpower, space and advertisements and promotion are done by Dinamalar, nevertheless the profits are taken by the 2nd and 3rd claimants in the names of their sons' concerns, and on that ground also, an independent auditor has to be appointed for the purpose of special audit of the accounts relating to the events and exhibitions conducted by the Firm. The contention of the claimants 2 and 3 with regard to "Events and Exhibitions", is that they have not conducted any exhibitions at the cost of the Firm, that they have not received any income from any exhibition and that even according to the 4th claimant, exhibitions are sponsored by advertisers. The further case of claimants 2 and 3 is that the Firm is used as a presenter of the Exhibition without any financial commitments except expenses for their own manpower and that on the other hand, the sponsor and other exhibitors gave advertisements both black and white and colour in their editions and also released colour advertisement to be published in their editions and as a result, according to claimants 2 and 3, the other claimants are also benefitted including the 4 claimant in his answer to Q No 420 put to him in his cross examination claimant. by the counsel for the 4th claimant stated that for the betterment of The 2 the students community Dinamalar conducts various programmes annually such as "JayithuKattuvom" for the students appearing for the final examinations in 10th and 12 standards. In his answer to Q No 424, the 2 claimant stated that the expenses for these events are met from the funds of Dinamalar, but they recoup the amount from the advertisers who advertise in the paper during the Engineering college admission season. Moreover Dinamalar newspaper is indirectly advertised and it reaches the lowest strata of society and that the growth of the advertisement revenue is mainly due to these programmes. The answers given by the 2 claimant to QnNos 425 to 427 are relevant and they read as follows:



O.P.No.40 of 2019, etc., batch

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Q No: 425: Are there any sponsors for these programmes?

A: There are one or two sponsors who give some material belonging to them like ball-point pen or scribbling pad etc. But 90% of the expenses is met by Dinamalar.

Q No: 426: Do you collect any money from these sponsors?

A: Some sponsors give money in the name of Dinamalar and some give materials for free distribution.

Q No: 427: Who is the event Manager for these occasions?

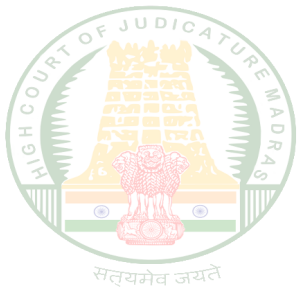
A: As far as Madras area is concerned, Mr.Sekar, Advertisement Manager looks after the programme.

Q No: 428: Is it correct to state that you engage the services of the Partnership Firm Sri Lakshmi and Brothers as Event Manager for these programmes and had also made payments to them towards the said services rendered by them from the accounts of Dinamalar?

A: I do not think Madras edition has given any amount. I have to look into the accounts. Most of the expenses are hall rent, cab rent and lodge rent and incidental expenses.

The 2 claimant in his answer to Qn No 430 denied the suggestion put to him by counsel for the 4th claimant that in regard to these events relating to the students only the expenses are accounted in Dinamalar and the income from the sponsors are not brought to books. He further stated in his answer to Q No 430 that he was very firm in that any payment made by any contribution should be made only in the name of Dinamalar.

14.10.3 The answers to Q Nos 431 to 434 in the cross



O.P.No.40 of 2019, etc., batch

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examination of 2 claimant relate to "Shoppers Mart" events and they read as under :-

Q No: 431: Can you tell the Tribunal as to who manages the "Shoppers Mart" events organized on behalf of Dinamalar?

A: Dinamalar is not organizing the "Shoppers Mart". We are only a part to the show. Many of the Exhibitors belong to multi national companies and they take care of their exhibits.

Q No: 432: What is the expenses incurred by Dinamalar for participating in the show the "Shoppers Mart" annually?

A: I have to look into the accounts.

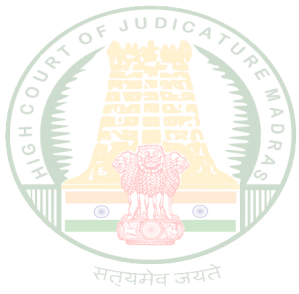
Q No 433: Are you aware of the income generated from this show and paid towards the share of Dinamalar?

A: I have no idea about the income generated. Partnership Firm belonging to your sons and that of claimant No 3 are

Q No: 434: I suggest to you that Sri Lakshmi and Brothers, the appointed regularly as Event Managers for all the shows conducted by Dinamalar and they are in receipt of the entire income generated from it. Only the expenses are written in the accounts of Dinamalar.

A: These events are organized to satisfy the big advertisers especially the multi national companies who want to cater to the rural market. Annually mela is held in one city and some times it be a total flop due to heavy rains or due to unstable political situation in that city. I donot know anything about Lakshmi Brothers and I could not answer those questions.

14.10.4 The 4th claimant also sought the appointment of a Chartered Accountant to conduct special audit with regard to Technical Audit of all assets and machinery also on the ground



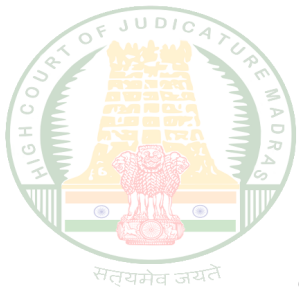
O.P.No.40 of 2019, etc., batch

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that the editions are not maintaining any asset register and in the absence of asset register, it is not possible to find out whether the money which had been utilized for the purchase of any machinery or other assets on behalf of the Firm is really so invested in the asset and whether the asset continues to be the asset of the Firm. The case of the claimants 2 and 3 as seen from their counter dated 9.12.2010 is that from the year 1956 there is no asset register maintained by the Firm, that the said fact is well known to all the claimants including the 4 claimant and now the 4th claimant is raising this issue with incorrect allegations to drag the proceedings and that the 4th claimant himself does not maintain the asset register in respect of the editions under his management. The claimants 2 and 3 while denying allegation of the 4th claimant that unless the asset register is maintained, it is not possible to find out whether the money which had been utilized for purchase of any machinery or other assets on behalf of the Firm is really so invested and the asset continues to be the asset of the Firm, submitted in their counter that for calculating the correct depreciation amount allowable under the Income Tax Act, the Auditor verifies the invoices of new assets purchases, their date of purchase, date of installation, freight paid on transport of goods, transit insurance paid for goods from factory to the edition's location and the gate entry seal at various check posts as well as the editions office, and all these verification surely would show the existence of the new assets. The claimants 2 and 3 further submitted that all the machineries are standing in the name of the Firm and there is no serious flaw in regard to the acquisition of assets on behalf of the Firm; that particulars of assets can be easily found out from the schedules attached to balance sheet and that whatever the additions to the assets made by claimants 2 and 1 from earnings of the four editions under their control but the credit for the value of these editions are being enjoyed by all the claimants including the 4 claimant.

Answers to QnNos 225 and 226 were elicited from 3"

168/183



O.P.No.40 of 2019, etc., batch

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claimant by the counsel for 4th claimant in his cross examination, with regard to purchase of machinery by claimants 2 and 3 and increase in the capital expenditure in respect of U4 editions, and they read as under:

QNo: 225: Please refer to para 35 of your claim statement. You have referred to the substantial modernization of the plant machinery and equipments by the claimants 2 and yourself in the U4 editions and have correspondingly shown an increase in the capital expenditure. Are you willing to produce the entire details in regard to the purchase and investment referred to by you in para 35 by way of bills, invoices receipts, ledger books any bank loans etc. for perusal before this Honourable Tribunal?

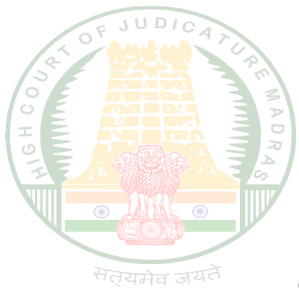
A: Yes we are willing.

Q No: 224: Do you admit that pending arbitration proceedings you have proceeded to procure machineries and increase the capital investments for the U4 editions?

A: No. I do not admit.

In pages 20 and 21 of Book 6-D being the balance sheet of the Firm for the year ending 31.3.2007 produced by claimants 2 and 3 as part of Exs K L 24 A to 24 I, we find a statement regarding the "Assets and Depreciation Schedule for U-4 group for the year ending 31 March 2007."

14.10.5 The evidence available in the form of the answers elicited in the cross examination of claimants 2 and 3 by the counsel for the 4th claimant referred above in our view does not make out a case for the appointment of independent auditor to conduct special audit of the editions of Dinamalar as claimed by the 4th claimant in his applications dated 15.11.2010 and 11.1.2013. The 4th claimant has also not proved his case for special audit of the editions of Dinamalar by independent auditor as claimed by him in his applications dated 15.1.12010



O.P.No.40 of 2019, etc., batch

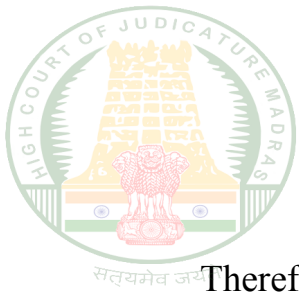
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and 11.1.2013, by producing acceptable oral and documentary evidence.

14.10.6 Further, this Tribunal in para 34.10 and 34.11 of the Award dated 28.11.2013 has recorded a finding that the 4 claimant was fully aware of the balance sheets of the Firm for the years 1998-99 to 2010-11 and they were accepted by the 4th claimant. In view of the findings recorded in paras 34.1 to 34.19 of the Award of this Tribunal dated 28.11.2013 to the effect that the accounts of the partnership Firm have already been settled upto the year 2010-11 and the same cannot be re-opened, we hold that the 4th claimant is not entitled to the reliefs claimed in his applications dated 15.11.2010 and 11.1.2013 for special audit of editions of Dinamalar by an independent auditor for the period referred to in the said applications.

6.7.4 A perusal of the above award makes it clear that all the issues that are raised by the fourth claimant, with regard to the settlement of accounts from the year 1997 till date of issuance of dissolution notice, have been addressed based on the oral and the documentary evidences and after elaborate discussion, the Arbitral Tribunal had come to the conclusion stating that the fourth claimant has not at all raised any dispute before any Court of law for rendition of accounts or for other reliefs during the relevant period complained. On the other hand, every year after finalization of accounts, the fourth claimant had received their share of profits mentioned in accounts.

170/183



O.P.No.40 of 2019, etc., batch

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Therefore, after dealing with the evidence elaborately, the Tribunal had come to the conclusion that there is no need for resettle the settled accounts once again. The fourth claimant also took a stand that they have received his share of profit under protest. If that is so, nothing prevented him to take action against wrong doers then and there, conveniently no reasons was provided by the fourth claimant on this aspect, under these circumstances, after elaborately discussions on this aspect of oral and documentary evidences, the Arbitral Tribunal passed its 1st interim award. Therefore, this Court is also of the view that having received his share of profit every year without any demur and not taking actions for a decade, it is not fair on the part of the claimant to raise the dispute on the settled accounts in the year 2010 and thereafter. This is only appears to be a bald allegations. Thus, this Court is inclined to uphold the findings of the Tribunal to the extent that the accounts have been settled and the same need not to be reopened again pertaining to the year 1997 to the date of issuance of dissolution notice. Accordingly, **Issue No.VII is answered.**



O.P.No.40 of 2019, etc., batch

6.8 Issue No.VIII:-

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Whether the goodwill of the firm, trademark and brand name of “Dinamalar” was valued in terms of the provisions of Section 55 of the Partnership Act or subject to contract, if any, between the parties, after the dissolution of the firm for the purpose of winding up of the affairs of the firm and for the settlement of accounts among the parties?

6.8.1 Before dealing with the present issue, it is appropriate to extract the provisions of Section 53 and 55 of the Partnership, which reads as follows:

Section 53 RIGHT TO RESTRAIN FROM USE OF FIRM-NAME OR FIRM-PROPERTY.

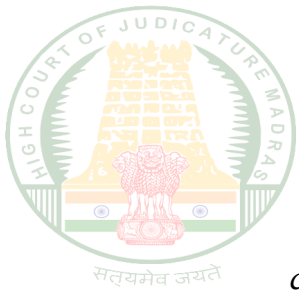
After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm-name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up

Provided that where any partner or his representative has brought the goodwill of the firm, nothing in this section shall affect his right to use the firm-name.

Section 55 SALE OF GOODWILL AFTER DISSOLUTION.

(1) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

*(2) RIGHTS OF BUYER AND SELLER OF GOODWILL.
Where the goodwill of a firm is sold after dissolution, a partner may*



O.P.No.40 of 2019, etc., batch

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carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not

(a) use the firm-name,

(b) represent himself as carrying on the business of the firm,

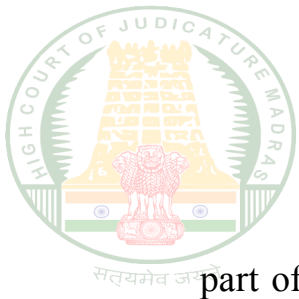
or

(c) solicit the custom of persons who were dealing with the firm before its dissolution.

(3) AGREEMENTS IN RESTRAINT OF TRADE. Any partner may upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 such agreement shall be valid if the restrictions are reasonable.

6.8.2 As far as Section 53 of the Partnership Act is concerned, it talks about the uses of the firm name. Subsequent to the dissolution of the firm, it restricts the partners to use the brand name individually, unless and otherwise agreed by the concerned parties.

6.8.3 Section 55 of the Partnership Act deals with the sale of the goodwill. In terms of Section 55 of the Partnership Act, once the dissolution is ordered, it is the duty of the Liquidator to value the goodwill of the firm, as a

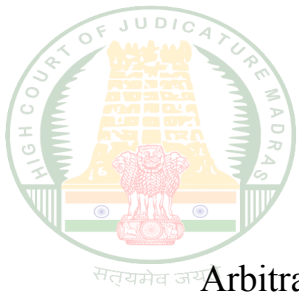


O.P.No.40 of 2019, etc., batch

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part of the intangible assets, during the course of the winding up of the firm,
unless and otherwise agreed by the concerned parties.

6.8.4 However in the present case, both the brand name and trademark as well as goodwill of the firm had not been valued at the time of valuation of the firm and also the valuation report had not been dealt with the same. Even if the editions of the partnership firm is going to be distributed as a residue to the partners, it cannot be distributed as proportionately, unless and otherwise the goodwill, trademark and brand name is valued, since the same is against the provisions of Sections 53 and 55 of the Partnership Act, 1932 and brand value and good will vary area to area accordingly edition to edition. Further, if the partners have agreed otherwise, certainly it can be allotted as per the agreement. But in the present case, no such agreement is available among the partners. Hence, the application of equity by the Arbitral Tribunal while division of edition along with intellectual properties, was made contrary to the provisions of Partnership Deed and Act, without any express agreement between the partners. Therefore, this Court is of the considered view that the



O.P.No.40 of 2019, etc., batch

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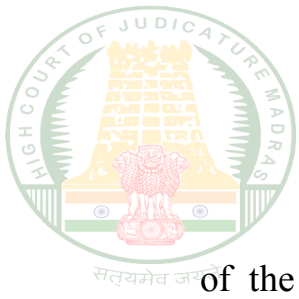
Arbitral Tribunal had committed the patent illegality while distributing the assets on their own choice to the partners without any express agreement between the parties and against the provisions of the Act.

6.8.5 Further, the Tribunal having come to the conclusion that the rights to be decided in the course of winding up of partnership firm, is right in *rem*, when such was the finding of the Tribunal, it really shocks the conscience of this Court, still how the Tribunal dealt with the issue of winding up. Hence, on this ground also the third Arbitration award is liable to be set aside. Accordingly, the Issue No.VIII is answered.

6.9 Issue No.IX:-

Whether the settlement of accounts had been arrived by the Arbitral Tribunal in terms of Section 48 of the Partnership Act read with Partnership deed dated 23.03.1997 ?

6.9.1 As far as the settlement of accounts in terms of Section 48 of the Partnership Act is concerned, if the Arbitral Tribunal arrived at the valuation



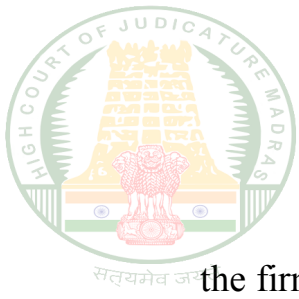
O.P.No.40 of 2019, etc., batch

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of the firm as going concern, it would have fetched for several hundred Crores. However, the Arbitral Tribunal had ignored to value the firm as a going concern and valued the assets on their own and selected DCF method on their own choice. The goodwill and the brand name have also not been valued. The distribution of the divisions as a residue have been made on the own wishes of the Arbitrators and the same is not permissible in terms of the provisions of Arbitration and Conciliation Act, 1996.

6.9.2 Section 28(2) of the Arbitration and Conciliation Act clearly provides that Arbitrators cannot act as a *amiable compositeur*. However, in the present case while distributing the residue, they had acted as *amiable compositeur* without the consent of the parties.

6.9.3 That apart, the Arbitrator cannot act as a Liquidator. While performing the functions as Liquidators, they have to decide the claims of the third parties. The Arbitrator cum Liquidator only traced out the debts of the firm based on the audited accounts. No claim was called for. It is the debt of



O.P.No.40 of 2019, etc., batch

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the firm, which was admitted by the firm. But if anything is not admitted or if there is any other claims by any of the creditors, debtors, statutory claim, employees claim, the same also has to be decided, for which they have to call for the claims from the secured and unsecured creditors and other stake holders. Even if there is no claim, the procedure of calling for the claim cannot be dispensed with. A mere publication of dissolution notice is not suffice to the call for the claim by the liquidator. The dissolution notice is for the purpose of declaration for the parties about the dissolution of the firm, so that the third parties will be aware of the status of the firm to deal with.

6.9.4 That apart, when the Arbitrator in the process of liquidating the assets, as per the provisions of Section 48 of the Partnership Act, they have to call for the claim, but no such claims were called for in the present case. In the absence of calling for the claims, the provisions of Section 48(b)(i) of the Partnership Act has not been complied. For all these reasons, this Court hold that the Arbitral Tribunal had committed the patent illegality in settlement of accounts in terms of provisions of Section 48 of the Partnership Act.



O.P.No.40 of 2019, etc., batch

Accordingly, **Issue No.IX is answered.**

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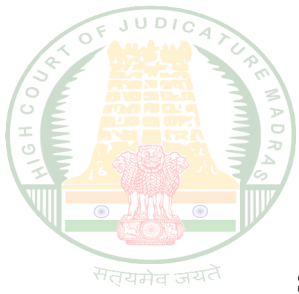
6.10 Issue No.X:-

Whether all the three interim award of the Tribunal is liable to be set aside, in terms of the provisions of Section 34 of the Arbitration and Conciliation Act, 1996?

6.10.1 For all the reasons stated above, this Court is of the following view:

(i) As far as the first award dated 28.11.2013 is concerned, since the findings of the Arbitral Tribunal pertaining to settlement of accounts among the partners are within the scope of arbitration agreement, I do not find any illegality on that aspect. Hence, this Court is inclined to uphold the same.

(ii) As far as second interim award dated 15.03.2014 is concerned, this Court is inclined to confirm the findings of the Arbitral Tribunal with regard to the declaration of the firm “Dinamalar” as partnership “at will” and it stands dissolved with effect from 27.02.2012. Further, with regard to the appointment of the valuer and other consequential directions i.e., Direction Nos.2 to 9 is concerned, this Court is inclined to



O.P.No.40 of 2019, etc., batch

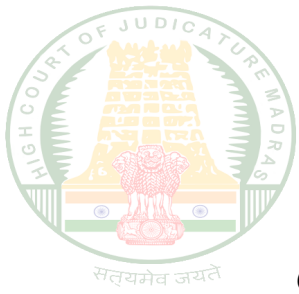
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set aside the same for the reason that this Court had already held that the Arbitrators have no jurisdiction to act as a Liquidator to wind up the affairs of the firm, since the interest of the third parties are involved. Even assuming, the Tribunal has power for winding up of the firm, the Tribunal acted excessively beyond the scope of the Partnership Deed and the Act. Hence, committed patent illegally.

(iii) As far as third interim award dated 29.09.2018 is concerned, since the Arbitral Tribunal have no jurisdiction to wind up the firm and even on merit also the exercise of equity in division and allotment of editions among the partners, valuation of assets, failure to call for claims and for acting as amiable compositor, the same is liable to be set aside. In the result, the third interim award is also set aside. Accordingly, the Issue No.X is answered.

6.11 Issue No.XI:-

Whether the Civil Suit Nos.600 of 2016 and 939 of 2016 are maintainable, in view of the decisions arrived in these Section 34 original petitions?

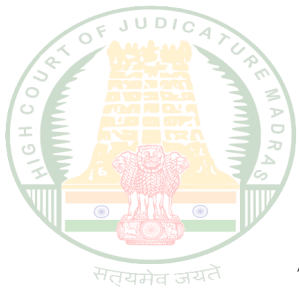


O.P.No.40 of 2019, etc., batch

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6.11.1 As far as the Civil Suits in C.S.Nos.600 and 939 of 2016, which are pertaining to the right of the trademark being a blooming lotus in between the word “Dinamalar” and the word “Dinamalar”, are concerned, this Court had arrived at a detailed conclusion how the trademark of the firm has to be dealt with after dissolution. The right of the partners and their legal representatives to use the Trademark, the word “Dinamalar”, have been changed subsequent to dissolution of the partnership firm. Therefore, all the partners/claimants and their successors are joint owners of the said trademark viz., a blooming lotus in between the word “Dinamalar” and the word “Dinamalar” and accordingly the same has to be dealt with after dissolution of the firm. Further, this Court is of the considered view that since all are joint owners and now the 10 editions of the partnership firm have been independently looking after by the 5 claimants and their legal heirs and in view of the above finding arrived in the O.Ps., certainly they are entitled to exploit the trademark for their benefit as per the present status. Accordingly, both the Civil Suits and all the O.As. are disposed of. Accordingly, Issue No.XI is answered.

180/183



O.P.No.40 of 2019, etc., batch

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7. In the result,

(i) The Original Petitions in O.P.Nos.122 of 2014 and 350 of 2017 are dismissed.

(ii) The Original Petitions in O.P.Nos.269 of 2014 and 391 of 2017 are partly allowed.

(iii) The Original Petitions in O.P.Nos.863 and 864 of 2018 and 40 of 2019 are allowed.

(iv) The Civil Suits in C.S.No.600 of 2016, C.S.No.939 of 2016, O.A.No.1120 of 2016, O.A.No.727 of 2016 and O.A.No.728 of 2016 are disposed of with the entitlement of parties as arrived in Issue No.XI above, in view of the finding arrived in Issue Nos.I to X.

(v) Consequently, the connected applications are hereby closed.

(vi) The respective parties are directed to carry on their business with the respective editions with the present status until the completion of winding up of the affairs of the partnership firm.

(vii) The parties are directed to work out their remedies to wind up the partnership firm in accordance with the provisions of the Indian Partnership Act, 1932.

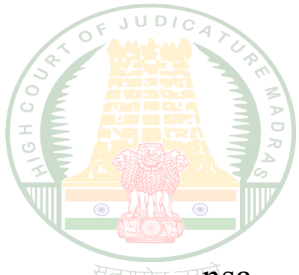
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Neutral Citation : Yes / No

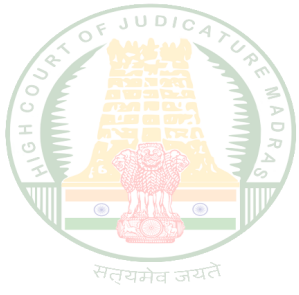
181/183



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O.P.No.40 of 2019, etc., batch



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O.P.No.40 of 2019, etc., batch

KRISHNAN RAMASAMY.J.,

nsa

**O.P.Nos.40 of 2019, 863 & 864 of 2018,
350 & 391 of 2017 and 122 & 269 of 2014
and A.No.1364 & 1365 of 2023, 7719 of 2018, 2062,
333, 37 & 38 of 2017, 4253 of 2016 and 3288 of 2014
and O.A.No.924 of 2018 and 1120, 727 & 728 of 2016
and C.S.No.600 & 939 of 2016**

10.08.2023

183/183