



CMA No.402 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2023

PRONOUNCED ON : 22.02.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.402 of 2023

and

CMP No.3427 of 2023

1. Kotla Venkataramayya Gupta
2. Mrs.Kotla Tulasi Lakshmi
3. Mr.Perumalla Ghana Lakshmi
4. Mrs.Samayamanthula Venkata Subhashini
(A3 & A4 rep. by their power Agent
Kotla Venkatramayya Gupta ... Appellants/Petitioners

Vs.

1. Mr.A.R.Prabhakar,
S/o. Mr.A.M.Raghupathy,
Partner-Sri Prasana Venkateswara Ice Factory,
No.1/62, III Cross Street, Visalakshi Nagar,
Ekkattuthangal, Chennai – 32.

2. Mr.V.G.B.Sivarama Prasad,
S/o.V.V.Gangadhara Rao,
Partner-Sri Prasana Venkateswara Ice Factory,
New No.7, Old No.50,
T.Nagar, Chennai – 600 017.



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3. Mrs.A.G.Hima Rani,
W/o.A.M.Gopinath,
Partner-Sri Prasana Venkateswara Ice Factory,
New No.7, Old No.37, Dharmaraja Koil Street,
Alandur, Chennai – 600 016.

Mr.Kotla Apparao (died)

4. Mr.Kotla Rama Krishna Mohanarao

5. Mr.Kotla Venkata Prasada Rao,
S/o.(late) Sri Venkata Ramaiah,
Partner-Sri Prasana Venkateswara Ice Factory,
No.22-14-8, Moganthivari Street,
Bhimavaram,
West Godavari (Dist),
Andhra Pradesh – 534 201.

6. Mrs.D.Bulamma

7. Mrs.A.R.Pappa
W/o. Mr.A.M.Raghupathy,
Partner-Sri Prasana Venkateswara Ice Factory,
No.9/4, Ramar Koil Street,
Nandambakkam, Chennai – 600 089.

8. Mr.Anil Babu Kotla

9. Mrs.Gade Tirumala

10. Mrs.Tummalapalli Suneetha

11. Mrs.Krishnaveni Kotla

... Respondents/Respondents.



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PRAYER: This Civil Miscellaneous Appeal is filed under Section 37 (1) of the Arbitration and Conciliation Act, 1996, against the order passed by the learned Arbitrator dated 15.11.2022 in IA No.10 of 2022 in Arb. Proceedings No.205 of 2019.

For Appellants : Mr.S.Rajendrakumar
For Respondents : Mr.D.Ferdinand (for R1)
for M/s.BFS Legal

JUDGMENT

Petitioners in IA No.10 of 2022 are the appellants herein.

2. Mr.D.Ferdinand, learned counsel takes notice on behalf the Caveator/1st respondent/Claimant.

3. After hearing both parties and perusal of the record, I find that the Arbitration O.P.No.205 of 2019 was came into being at the instance of the claim petitioner.

4. The above said Arbitration proceedings was taken up as per the direction of this Court in connection with the following reliefs,



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(a) Declaration that no person other than the Partners viz., the claimant, the 1st, 2nd, 5th & 7th Respondents herein, have any manner of right, subsisting or enforceable claim or interest whatsoever in the Partnership Firm, “Sri Venkateshwara Ice Factory” (registered with the Registrar of Firms on 22.02.1992 vide Reg.No.153)

b) For a Permanent Injunction restraining the Respondents 3, 4 & 6 who have retired, from the partnership firm, “Sri Venkateshwara Ice Factory”, in any manner disturbing, interfering or involving in the day-to-day administration and affairs of the said partnership firm or sully the names of the Claimant with its customers and third parties and creating any kind of trouble to the Claimant and thereby interfering with the peaceful day to day operations of the Partnership Firm – Sri Prasanna Venkateswara Ice Factory;

(c) Directing the 1st, 3rd & 4th Respondents to jointly or severally pay liquidated damages of Rs.30,00,000/- (Rupees Thirty Lakhs only) as compensation, towards mental agony and loss of reputation caused to the Claimant, in view of the false and frivolous complaint lodged by them and thereby subjecting the Claimant to and family embarrassment amongst friends and family members;

(d) To direct the respondents 3 & 4 incurred to pay the cost incurred by the Claimant in defending the frivolous criminal proceedings initiated by them as against the Claimant, together with the cost of this Arbitration.”

Subsequently, there was an amendment.



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5. The sum and substance of the dispute before the Arbitral Tribunal is, the partnership firm in the name of 'Sri Prasanna Venkateswara Ice Factory', was registered with Registrar of Firms on 22.02.1992 in association of 9 partners on 24.01.1992 and there were modification of certain partnership.

6. The contentions and rival contentions raised before the Arbitral Tribunal, are not necessary for determination of this Civil Miscellaneous Appeal.

7. When the arbitration proceedings are in the end of the conclusion, it appears that the present application was filed by the legal heirs of late Kotla Lakshmi Narayana, to implead them as legal representatives of late Kotla Lakshmi Narayana.

8. The Arbitral Tribunal after adverting to the same, has held that they are not necessary parties and accordingly, rejected the Interlocutory Application and hence, the Civil Miscellaneous Appeal.



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9. The present appellants/petitioners are claiming to be the legal representatives of late Kotla Lakshmi Narayana. The fact as observed by the Arbitral Tribunal is that the said late Kotla Lakshmi Narayana was not at all a partner of the said firm, on the date of the initiation of the Arbitration Proceedings, as he retired long before viz 31.03.2005, which is now disputed by the present appellants/petitioners.

10. According to the claimant, the partnership deed dated 24.01.1992 was reconstituted on two occasions and the present claim was made by the legal heirs of late Kotla Lakshmi Narayana.

11. Based upon the averments made in the affidavit filed by the appellants herein, the said late Kotla Lakshmi Narayana has ceased to be a partner on and from 31.03.2005, and the said partnership firm was reconstituted with the continuing partners on and from 01.04.2005 was admitted and hence, after 17 years from the death of their father, the petitioners therein/appellants have chosen to approach the Arbitral Tribunal to implead themselves as parties to the proceedings.



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12. The Arbitral Tribunal has relied upon the recitals in the original Deed of Partnership that the legal heir(s) of the deceased partner cannot be made as partner(s) of the said firm and also stated that the *lis* is between the two set of persons, who are partners on the date of the Arbitral Proceedings and it is upto the person to decide with whom, he has a dispute and hence, except the claim petitioner, who is the *dominus litis*, no one could be permitted to be impleaded as respondents against the wish of the claimant and observing so, the Arbitral Tribunal has rejected the impleading application.

13. The petitioners/appellants claim that they are the legal heirs of their father late Kotla Lakshmi Narayana, who died in the year 2005. The present dispute is with regard to the reconstituted partnership firm in the year 2016. The petitioners have approached the Arbitral Tribunal by way of impleading after 17 years, moreover, the partnership firm was reconstituted twice after, their father's death.



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14. Therefore, after going through the recitals in the Partnership Deed and also the order passed in the Arbitral Proceedings and the dispute before the Arbitrator, the findings and reasons assigned by the Arbitral Tribunal, appears to be just and fair and does not require any intervention at the appellate stage and this Civil Miscellaneous Appeal is held to be devoid of merits and liable to be dismissed.

15. Accordingly, the Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

22.02.2023

Index : Yes/No
Neutral Citation : Yes/No.
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RMT.TEEKAA RAMAN,J.,

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Pre-delivery judgment in
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