



Arb.O.P.No.5

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2023

DELIVERED ON: **27.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

Arb.O.P.No.5 of 2022

R.Maneeshankar

... Petitioner

Vs.

1.P.Seeman

2.Mrs.Jayanthi

3.S.S.Senthil Rajan

4.S.V.Shanmugam

5.R.Vijaya Akash

6.S.Ashok

7.K.Tharani

8.G.Vinath Babu

9.M.jayashanmugam

10.C.Pushparaj

...Respondents



PRAYER: Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator to adjudicate upon the disputes between the petitioners and respondents arising out of the Partnership Deed dated 23.02.2017.

For Petitioner : Mr.S.Vijay Kumar, Senior Counsel
for Mr.J.Melwin Dabaz

For Respondents : Mr.P.Seeman - Party-in-person, R1

Mrs.Jayanthi - Party-in-person, R2

Mr.V.Ragunathan for R3 to R10

ORDER

The petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking to appoint a Sole Arbitrator to adjudicate upon the dispute between the petitioner and the respondents arising out of a Partnership Deed dated 23.02.2017.

2.Mr.S.Vijay Kumar, learned Senior Counsel appearing on behalf of the petitioner would submit that the petitioner and the respondents have entered into a Partnership Deed dated 23.02.2017 for running an institute for coaching the students for competitive examination under the name and



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style of Seeman School of Medical Entrance. The parties have agreed to raise a share capital as envisaged under the said Deed, he would submit that since the institute was not started, there arose a dispute between the petitioner and the respondents and therefore invoking Clause 19 of the Partnership Deed, a notice was issued by the petitioner through his Lawyer calling upon the addressees viz., the respondents herein to appoint an Arbitrator. The said notice was replied to by the first and second respondents indicating that they should first return their house property at Ekkattuthangal and quote the Arbitrator Fees and also to compensate the loss and only on fulfillment of their condition, they would participate in the Arbitration Proceedings. He would submit that Clause 19 of the Partnership Deed envisages resolution of dispute by appointment of an Arbitrator which itself has to be read as a separate agreement for arbitration and that the parties are bound by the said Clause. He would further submit that whatever claims have been raised by the first and second respondents could also be arbitrated by the same Arbitrator.

3.Originally the first and second respondents were represented by a counsel who had also filed a counter statement on behalf of the first



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respondent. In the said counter affidavit, various allegations have been raised against the petitioner as well as the respondents 3 to 10. Due to certain constraints, the said counsel has withdrawn his appearance and thereafter the respondents 1 and 2 had been represented before this Court as party in person.

4.They would submit that the petitioner and the third respondent had forcibly made the first and second respondents to execute a Power of Attorney in their favour of the properties owned by them. The Power of Attorney was given under the impression that it will stand as a security for the amount that has been illegally claimed by the petitioner and the third respondent. They would submit that an endorsement to the effect had been made by the first and second respondents in the presence of three other Partners in the Partnership Deed itself. They would submit that based on the said Power of Attorney, the petitioner and the third respondent have transferred the property belonging to the respondents 1 and 2 in a sham and nominal way in favour of their close relatives/friends. Therefore, they would submit only if the properties are restored back to the respondents, they would be able to participate in the Arbitration Proceedings. They would also



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further submit that they have already initiated criminal action as against the erring Partners and would only proceed to see that such criminal proceedings are taken into its logical ends. They would also further submit that the third respondent herein had filed a suit in O.S.No.184 of 2022 seeking for a recovery of money on the allegation that the same was paid as loan to the Partnership Firm and not as a capital by the Partners.

5.Mr.V.Ragunathan, learned counsel appearing for the respondents 3 to 10 would support the claim of the petitioner. When queried upon as regards the suit filed by the third respondent, he would submit that the claim in O.S.No.184 of 2022 could also be gone into by the Arbitrator.

6.I have considered the submissions made by all concerned and perused the materials available on record.

7.It is an admitted fact that the parties to the Original Petition have entered into a Partnership Deed on 23.02.2017. The Clause 19 of the Partnership Deed envisages an Arbitration Clause, the said Clause is extracted hereunder:



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In the event of any dispute or differences arising between the parties hereto either touching or concerning the construction, meaning or effect of this Deed or the respective rights and liabilities of the parties hereto, or their enforcement there under, it shall be first settled amicably through discussions between the parties and if not resolved then otherwise referred to the arbitration of a Sole Arbitrator if agreed upon, failing which to the Sole Arbitrator as appointed by the Court in accordance with the provisions of the Arbitration and Conciliation, Act 1996. The arbitration proceedings shall be conducted at Chennai in English language.

8.It is not disputed by the respondents 1 and 2 that the dispute between them could not be sent to arbitration as the said Clause is not binding on them. Their contention is that they should be in a position of status quo ante viz., that their properties alleged to have been illegally acquired by the petitioner and the third respondent, they would have to be put back in their possession and only thereafter the issue can be arbitrated.

9.It is also not disputed that the Power of Attorney had been executed by the respondents 1 and 2 for payment of monies in favour of the petitioner



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and the third respondent, this execution of Power of Attorney has been endorsed in the Partnership Deed itself. Hence, I am prima facie satisfied that the Power of Attorney has been executed after the disputes had arisen between the parties pursuant to the Partnership Deed and in satisfaction to repay the money under the Partnership Deed. The respondents 1 and 2 seem to have executed such Power of Attorney. Hence, the issue of executing the Power of Attorney also arises out of a dispute under the Partnership Deed. Therefore, the claim of the respondents 1 and 2 as regards the execution of Power of Attorney and the execution of Sale Deed by the petitioner and the third respondent can also be gone into the by the Arbitrator.

10.It is also open to them to seek calling for accounts from the petitioner who had already executed the Sale Deed. This can also be done before the Arbitrator as the dispute with regard to the Power of Attorney and the consequential execution of the Sale Deed also arises from the dispute arising out of the Partnership Deed. I am also satisfied that the parties are bound by Clause 19 of the Partnership Deed dated 23.02.2017.



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11.In light of the above, Mr.C.Manikkam, B.Sc., B.L., District Judge (Retd.), Mobile No.80984 78135 is appointed as an Arbitrator to arbitrate the dispute arising out of the Partnership Deed dated 23.02.2017 entered into between the parties in the present Original Petition. The parties shall file their claims and counter claims before the learned Arbitrator within a period of two months from the date of the Arbitrator issuing notice. The learned Arbitrator is directed to proceed with the dispute between the parties. This Court request the learned Arbitrator to dispose of the dispute within a period of six months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

12.The learned Arbitrator is entitled to fees as per the Schedule (4) of the Arbitration and Conciliation Act, 1996.

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Index: Yes/No
Speaking Order: Non-Speaking Order
Neutral Citation Cases: Yes/No
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K. KUMARESH BABU, J.

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