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ARB.O.P.(Com.Div) No.259 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.259 of 2023

1.S. Palaniappan

2.S. Eswaran

3.P. Jagatheesan

4.K. Madhesawaran

5.S. Nagarani

6.K. Sathya

7.K. Gomathi

... Petitioners

Vs.

R. Ganesan

... Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate upon the disputes arisen between the petitioners and the respondent under the Partnership Agreement dated 11.02.2014.

For Petitioners : Mr.K.M. Arun

For Respondent : Mr.G. Mohan



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ORDER

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This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act (hereinafter referred to as 'the Act'), seeking for appointment of an Arbitrator by this Court.

2. The petitioners claim that the respondent and the petitioners have entered into a Partnership Agreement dated 11.02.2014. The petitioners have raised a dispute against the respondent arising out of the said Agreement. There is an arbitration clause available in the Partnership Agreement dated 11.02.2014, which is extracted hereunder:-

“16) *ARBITRATION:*

That if any dispute or difference of opinion arises among the partners, the arbitrators, who are appointed by the partners, shall settle the same and their award is final.”

3. The petitioners have also invoked arbitration in accordance with the aforementioned arbitration clause by issuing notice to the respondent on 23.02.2023. The arbitration invocation notice dated 23.02.2023 has been



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returned by the respondent with an endorsement 'refused'. Since there is no consensus between the parties to the dispute with regard to the name of the Arbitrator, the present petition has been filed.

4. A counter-affidavit has been filed by the respondent denying the contentions of the petitioners. According to the respondent, he never entered into any Partnership Agreement dated 11.02.2014 with the petitioners. He has contended that the petitioners have committed fraud by fabricating a Partnership Agreement dated 11.02.2014, as if the respondent is a partner in the partnership business. The partnership business pertains to the transportation contract for transporting liquor from TASMAL Depot.

5. Earlier, the respondent had filed a Writ Petition in WP.No.7520 of 2017 before this Court, pertaining to the very same partnership business of transporting liquor from TASMAL Depot. As seen from the counter-affidavit filed by the respondent, the petitioners were arrayed as party respondents, though pursuant to the directions given by the Writ Court. Even in the Writ Petition, the petitioners in this Arbitration OP had contended that there is a Partnership Agreement dated 11.02.2014 between the petitioners and the



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respondent. After recording that there is no dispute between the partners, the respondent in this Arbitration OP was directed to produce all the documents before the respondents 1 and 2 therein, within a period of two weeks from the date of receipt of a copy of that order. On receipt of the said documents, the Regional Manager (SG), Tamil Nadu State Marketing Corporation Limited (TASMAC) was directed to issue notice to the concerned parties including the partners of the Firm and conduct inquiry and pass orders on merits and in accordance with law, within a period of six weeks thereafter.

6. While deciding the application under Section 11 of the Act, this Court will have to take a *prima facie* view, as to whether there exists an arbitration clause or not in the subject matter of the contract. Even though the respondent contends that the petitioners have committed fraud against him and have fabricated a Partnership Agreement dated 11.02.2014 as if the respondent is a partner, there is no conclusive evidence to show that the petitioners have fabricated the Partnership Agreement dated 11.02.2014, which is the subject matter of dispute in this Arbitration OP.



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7. The documents filed by the respondent along with the counter-affidavit in this Original Petition, are all self-serving documents. There is no order passed by any Statutory Authority or by a Court of law, to prove that the Partnership Agreement dated 11.02.2014 which is the subject matter of dispute, is a fabricated document.

8. The learned counsel for the respondent had relied upon a judgment of the Hon'ble Supreme Court in the case of '**A. Ayyasamy Vs. A. Paramasivam & others**' reported in '**(2016) 10 SCC 386**', to substantiate his contention that whenever serious allegations of fraud are made, the dispute is not an arbitrable dispute. However, as seen from the said judgment, it has been made clear that mere allegation of fraud in the pleadings by one party against the other, cannot be a ground to hold that the matter is incapable of settlement by Arbitrator and should be decided by the Civil Court.

9. As observed earlier, in the case on hand, there is no conclusive evidence to prove that the Partnership Agreement dated 11.02.2014 which is the subject matter of dispute, is a fabricated document and fraud has been committed by the petitioners. As observed earlier, while deciding an



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application under Section 11 of the Act, this Court will have to take only a *prima facie* view, as to whether, there exists an arbitration clause or not.

Being a dispute arising out of a Partnership Agreement dated 11.02.2014, the said dispute is certainly an arbitrable dispute. Though serious allegations of fraud have been levelled by the respondent against the petitioners as seen from the respondent's counter-affidavit, since there is no conclusive evidence to substantiate the said contentions, this Court while deciding an application under Section 11 of the Act, cannot adjudicate on the said contentions. It is only for the Arbitrator to adjudicate on the said contentions based on the oral and documentary evidence produced by the respondent before the Arbitrator appointed by this Court.

10. As seen from the respondent's own pleadings, the petitioners were arrayed as party respondents in a Writ Petition filed by the respondent pertaining to the transportation contract with M/s.TASMAC. The respondent may contend that only on the directions of the Writ Court, the respondent had impleaded the petitioners in the said Writ Petition. Having made the petitioners as party respondents in the Writ Petition pertaining to the transportation contract with TASMAC, which is indirectly connected to the



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present dispute between the parties arising out the Partnership Agreement dated 11.02.2014, this Court cannot come to the definite conclusion that the petitioners had committed fraud against the respondent and that they have also fabricated the Partnership Agreement dated 11.02.2014. It is only for the Arbitrator to adjudicate on the respondent's contention as to whether the petitioners have committed fraud or not.

11. The respondent is also having the right to file an application under Section 16 of the Act, questioning the jurisdiction of the Arbitrator to adjudicate the dispute. The respondent has got the right even to question the existence of the valid Arbitration Agreement between the parties under Section 16 of the Act.

12. While that be so, this Court, while exercising its powers under Section 11 of the Arbitration and Conciliation Act, 1996, has to only see, as to whether on a *prima facie* case, there is an arbitration clause or not, in the subject matter of dispute namely the Partnership Agreement dated 11.02.2014. As extracted supra, the Partnership Agreement dated 11.02.2014, contains an arbitration clause. Though the respondent may dispute the same, this Court is



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of the considered view that since there is no conclusive evidence to prove the respondent's contention, necessarily, this Court will have to appoint an Arbitrator in terms of the arbitration clause contained in the Partnership Agreement dated 11.02.2014.

13. For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for, by issuing the following directions:-

(a) This Court appoints Mr.D. Saravanan, Advocate, having Office at New No.9, Old No.5/1, Canal Bank Road, Kasthuribai Nagar, Adyar, Chennai – 600 020, Mobile No.:9840044177, as the Sole Arbitrator to adjudicate the dispute between the petitioners and the respondent arising out of the Partnership Agreement dated 11.02.2014, on merits and in accordance with law.

(b) The Arbitrator shall be paid his remuneration/fees in accordance with the IV Schedule of the Arbitration and Conciliation Act, 1996.



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(c) Both the parties shall equally share the Arbitrator's fees.

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

(e) Liberty is granted to the respondent to file an application under Section 16 of the Arbitration and Conciliation Act, 1996, questioning the jurisdiction of the Arbitrator and also giving him liberty to raise all objections which he has raised in this petition, in the application filed before the Arbitrator.

08.09.2023

Index: Yes/ No
Speaking/Non-speaking order
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ABDUL QUDDHOSE, J.

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