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ARB.O.P.(Com.Div) Nos.670 & 671 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) Nos.670 & 671 of 2022

Mrs.K. Bagyalakshimi

... *Petitioner in*
Arb.O.P.(Com.Div.) No.670/2022

Ms.Vaishnavi

... *Petitioner in*
Arb.O.P.(Com.Div.) No.671/2022

Vs.

S.M. Mohammad Saddam

... *Respondent in both Petitions*

Common Prayer : Arbitration Original Petitions (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a suitable person as the Sole Arbitrator to decide the disputes which have arisen between the petitioner and the respondent and for costs.

For petitioners : Mr.M. Sricharan Rangarajan,
(*in both Petitions*) Senior Counsel
for Mr.Mohammed Ashick

For respondent : Mr.K.P. Sathish Kumar
(*in both Petitions*)



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ORDER

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These petitions have been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'the Act') seeking for appointment of an Arbitrator by this Court.

2. The respective petitioners and the respondent are partners under a Partnership Deed dated 26.12.2014. The respective petitioners claim to have invested certain sums of money and they also claim that they have given their technical know-how for the smooth running of the Partnership business. There seems to be a dispute arising out of the Partnership Deed dated 26.12.2014. The respective petitioners had invoked arbitration in accordance with the arbitration clause contained in the Partnership Deed dated 26.12.2014 and the same is extracted hereunder:

“18. ARBITRATION:

All disputes and questions in connection with the partnership shall be referred to arbitration.”

3. The arbitration invocation notice was sent by the petitioners as per the provisions of Section 21 of the Act, to the respondent on 09.05.2022.



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A reply was also sent by the respondent on 21.05.2022 to the said notice.

In the said reply, the respondent has not said anything about the arbitration clause available in the Partnership Deed dated 26.12.2014. However, according to the respondent, no monies are due and payable to the petitioners under the said Partnership Deed. A legal notice was also sent by the petitioners to the respondent on 20.06.2022, which was replied to by the respondent on 12.07.2022. Since there has been no consensus with regard to the name of the Arbitrator, the petitioners have filed these petitions under Section 11 of the Act, seeking for appointment of an Arbitrator.

4. A counter-affidavit has been filed by the respondent in both the petitions, denying the contentions of the petitioners. He has reiterated the contents of the reply sent by the respondent earlier to the notices sent by the petitioners. He has also questioned the jurisdiction of this Court to entertain these petitions under Section 11 of the Act, as according to him, the entire cause of action arose only in Karnataka and not within the State of Tamil Nadu.



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5. The only issue that arises for consideration in these petitions is whether this Court has got the jurisdiction to entertain these petitions under Section 11 of the Act.

6. Learned Senior Counsel appearing for the petitioners drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of '*Ravi Ranjan Developers Pvt. Ltd. Vs. Aditya Kumar Chatterjee*' reported in '*2022 SCC OnLine SC 568*' and would submit that Section 11(6) of the Arbitration and Conciliation Act, 1996, has to be harmoniously read with Section 2(1)(e) of the Arbitration and Conciliation Act, and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the Arbitration and Conciliation Act.

7. Learned Senior Counsel also drew the attention of this Court to another judgment of the Hon'ble Supreme Court in the case of '*BBR (India) Private Limited Vs. S.P. Singla Constructions Private Limited*' reported in '*(2023) 1 SCC 693*' and in particular, he drew the attention to paragraph 37 of the said judgment and would submit that the Hon'ble



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Supreme Court has held that while deciding an application under Section 9 of the Arbitration and Conciliation Act, in cases where the seat of arbitration is not fixed, the Court where a part of cause of action has arisen, will have the jurisdiction to decide an application under Section 9 of the Arbitration and Conciliation Act.

8. Relying upon the aforesaid decisions of the Hon'ble Supreme Court, the learned Senior Counsel appearing for the petitioners would submit that since in the instant case:-

- a) The petitioners are residing within the State of Tamil Nadu;
- b) The General Power of Attorney dated 02.03.2019 was executed at Pollachi in favour of the respondent, within the State of Tamil Nadu;
- c) Cancellation of the General Power of Attorney was registered on 24.04.2019 by the petitioners in favour of the respondent at Pollachi, within the State of Tamil Nadu;
- d) Payments were made by the petitioners towards their invested amounts under the Partnership Deed dated 26.12.2014 only from Tamil Nadu,



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this Court is having the jurisdiction to entertain these petitions under Section 11 of the Act.

9. However, on the contrary, learned counsel for the respondent would once again reiterate that the entire cause of action arose only in the State of Karnataka. Further, he would reiterate the contents of the reply sent by the respondent to the legal notice sent by the petitioners wherein, the respondent has disputed the claim of the petitioners, as according to the respondent, no monies are due and payable to the petitioners under the Partnership Deed dated 26.12.2014. He would submit that since the dues have already been settled, there is no dispute arising out of the Partnership Deed dated 26.12.2014 and since there is no dispute, the question of appointment of an Arbitrator by this Court will not arise.

10. Discussion:

11. The following are the undisputed facts:-

- (a) The respective petitioners are residents in the State of Tamil Nadu;
- (b) The payments were made by the petitioners under the Partnership Deed dated 26.12.2014 entered into with the respondent only from



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the State of Tamil Nadu;

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(c) The respective petitioners had executed the General Power of Attorney dated 02.03.2019 in favour of the respondent only at Pollachi, within the State of Tamil Nadu;

(d) The General Power of Attorney dated 02.03.2019 was cancelled by the petitioners in favour of the respondent by a registered Cancellation Deed dated 24.04.2019 at Pollachi, within the State of Tamil Nadu.

12. Admittedly, the part of cause of action has arisen within the State of Tamil Nadu. The arbitration clause contained in the Partnership Deed dated 26.12.2014 does not stipulate neither the seat of arbitration nor the venue of the arbitration. In view of the same, the decisions relied upon by the learned Senior Counsel for the petitioners referred to *supra*, will squarely apply to the facts of the instant case.

13. In the decision of the Hon'ble Supreme Court in ***BBR (India) Private Limited's case*** referred to *supra*, in paragraph 37, it has been categorically held that whenever a seat of arbitration is not disclosed in the



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Arbitration Agreement, the Court where a part of cause of action has arisen, will have the jurisdiction to decide an application under Section 9 of the Arbitration and Conciliation Act. Paragraph 37 of the aforesaid decision is extracted hereunder:-

“37. We have already referred to the first few sentences of the aforementioned paragraph and explained the reasoning in the context of the present case. The paragraph BGS SGS Soma (supra) also explains the non-obstante effect as incorporated in Section 42 to hold that it is evident that the application made under Part-I must be to a court which has a jurisdiction to decide such application. Where ‘the seat’ is designated in the agreement, the courts of ‘the seat’ alone will have the jurisdiction. Thus, all applications under Part-I will be made in the court where ‘the seat’ is located as that court would alone have jurisdiction over the arbitration proceedings and all subsequent proceedings arising out of the arbitration proceedings. The quotation also clarifies that when either no ‘seat’ is designated by an agreement, or the so-called ‘seat’ is only a convenient venue, then there may be several courts where a part of the cause of action arises that may have jurisdiction. An application under Section 9 of the Act may be preferred before the court in which a part of cause of action arises in the case where parties had not agreed on the ‘seat of arbitration’. This is possible in the absence of an agreement



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fixing 'the seat', as an application under Section 9 may be filed before 'the seat' is determined by the arbitral tribunal under Section 20(2) of the Act. Consequently, in such situations, the court where the earliest application has been made, being the court in which a part or entire of the cause of action arises, would then be the exclusive court under Section 42 of the Act. Accordingly, such a court would have control over the arbitration proceedings."

14. In the decision rendered by the Hon'ble Supreme Court in ***Ravi Ranjan Developers Pvt. Ltd's case (supra)***, in paragraphs 26 & 27, it has been held that Section 11(6) of the Arbitration and Conciliation Act, has to be harmoniously read with Section 2(1)(e) of the Arbitration and Conciliation Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the Arbitration and Conciliation Act.

15. Therefore, it is clear that Section 2(1)(e) of the Act, which defines Court, is applicable to both Section 9 application as well as to a Section 11 application. Section 9 application is filed for interim protection whereas Section 11 application is filed for appointment of an Arbitrator.



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16. In view of the settled law as laid down by the aforesaid decisions that too in a case where a part of cause of action has admittedly arisen within the State of Tamil Nadu, this Court is having the jurisdiction to entertain an application under Section 11 of the Act, seeking for appointment of an Arbitrator.

17. The undisputed facts which have been recorded by this Court earlier in paragraph 11 will undoubtedly make it clear that this Court is having the jurisdiction to entertain these petitions under Section 11 of the Act as part of cause of action has been admitted by the respondent.

18. Therefore, the contention of the respondent that this Court does not have the jurisdiction to entertain these petitions, is rejected by this Court. With regard to the contention that the respondent is not liable to pay any money to the petitioners is concerned, the respondent will have to raise all those objections before the Arbitral Tribunal, once the same is constituted pursuant to the orders passed by this Court in these petitions.



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19. For the foregoing reasons, this Court appoints Mr.E.Manoharan, Advocate, as a Sole Arbitrator, to adjudicate the dispute between the petitioners and the respondent arising out of the Partnership Deed dated 26.12.2014. Accordingly, this Arbitration Original Petition is allowed as prayed for, by issuing the following directions:-

(a) This Court appoints Mr.E.Manoharan, Advocate, having office at No.10, Sai Swetha Apartments, C2, 1st Cross Street, Malavia Avenue, Thiruvanmiyur, Chennai – 41, Mobile No.:9884003684, as a Sole Arbitrator, to adjudicate the dispute between the parties arising out of the Partnership Deed dated 26.12.2014.

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

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



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(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.

08.08.2023

Index: Yes/ No
Speaking/Non-speaking order
Internet: Yes/No

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