



WEB COPY



Arb.O.P.(Com. Div.) No.644 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com. Div.) No.644 of 2022

S.Ayyappan

... Petitioner

Vs.

R.Sellathambi

... Respondent

PRAYER: Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator as per clause 24 of the partnership deed dated 01.04.2013 entered between the petitioner and the respondent by dividing the assets and liabilities of the partnership firm as per the terms of the partnership deed dated 01.04.2013.

For Petitioner : Mr.Abdul Razack.M

For Respondent : Mr.Avinash Wadhwani

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator by this Court.



WEB COPY



Arb.O.P.(Com. Div.) No.644 of 2022

2. The petitioner and the respondent have entered into a partnership deed dated 01.04.2013. As per the said partnership deed, both of them are partners. There seems to be a dispute between the petitioner and the respondent, arising out of the partnership deed dated 01.04.2013.

3. The petitioner had earlier filed a Suit in O.S.No.483 of 2019 on the file of the I Additional District Court, Salem, seeking for dissolution of the partnership firm and also for distribution of assets between the partners. I.A.No.2 of 2020 was filed by the respondent in the said Suit under Order VII Rule 11 of C.P.C., seeking for rejection of the plaint on the ground that in the partnership deed dated 01.04.2013, there is an arbitration clause. By an order dated 08.02.2022 passed in I.A.No.2 of 2020, the application filed by the respondent under Order VII Rule 11 of C.P.C. was allowed and the plaint filed in O.S.No.483 of 2019 came to be rejected. Pursuant to the order dated 08.02.2022 passed in I.A.No.2 of 2020 in O.S.No.483 of 2019 on the file of the I Additional District Court, Salem, the petitioner has now filed this application under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator in accordance with the arbitration clause contained in the partnership deed dated 01.04.2013.



WEB COPY



4. The arbitration clause contained in the partnership deed dated 01.04.2013 is extracted hereunder:

"24. That all disputes and differences relating to the partnership or its dissolution or arising out of this deed between the parties to this deed, or between their legal representatives or between any of them and their respective legal representatives, whether during the subsistence of partnership or at any time thereafter shall be referred to arbitration in accordance with the provisions of Indian Arbitration Act, 1940 or any modification therein and the decisions or award given by the arbitrator shall be binding on all the parties hereto."

5. The petitioner has also invoked the arbitration by sending a notice to the respondent on 13.07.2022, suggesting the name of an arbitrator and requesting the respondent to agree for arbitration. A reply has also been sent by the respondent on 09.08.2022 to the invocation notice wherein the respondent has admitted that there is an arbitration clause in the partnership deed dated 01.04.2013, but, has stated that only through a panel of arbitrators, the dispute can be adjudicated.



WEB COPY



6. Since there has been no consensus between the petitioner and the respondent with regard to the name of the arbitrator, the petitioner has been constrained to file this petition under Section 11 of the Arbitration and Conciliation Act, seeking for appointment of an arbitrator.

7. A counter affidavit has been filed by the respondent, stating that the partnership firm has already been dissolved and therefore, there is no dispute arising out of the partnership deed dated 01.04.2013. However, the same is disputed by the learned counsel for the petitioner, who claims that the partnership firm was never dissolved. Infact, the petitioner has filed a Suit in O.S.No.483 of 2019 on the file of the I Additional District Court, Salem, seeking for dissolution of the partnership firm. While that be so, it is clear that there is a dispute, as to whether the partnership firm was dissolved or not. The said dispute can be adjudicated only by an arbitrator in terms of the arbitration clause contained in the partnership deed dated 01.04.2013.

8. In fact, as seen from the respondent's own reply dated 09.08.2022, they have admitted that there is an arbitration clause in the partnership deed dated 01.04.2013. The only plea taken by them in the said reply was that a



sole arbitrator appointed by the petitioner cannot adjudicate the dispute between the parties, but, only through a panel of arbitrators appointed by both the parties to the dispute, the dispute can be adjudicated. Therefore, it is very clear that there is an arbitration clause in the partnership deed dated 01.04.2013 which is the subject matter of dispute between the parties.

9. For the foregoing reasons, this Court is of the considered view that there is a valid arbitration agreement available in the partnership deed dated 01.04.2013 which has been extracted supra and the parties are bound by the same. The petitioner has also invoked arbitration by his notice dated 13.07.2022 which has been duly received by the respondent and a reply has also been sent on 09.08.2022, for which, a rejoinder was also sent by the petitioner on 18.08.2022. In view of the existence of a valid arbitration agreement in the partnership deed dated 01.04.2013 and there being no consensus between the parties for naming the arbitrator, this Court will have to necessarily appoint an arbitrator in terms of Section 11 of the Arbitration and Conciliation Act, 1996.



WEB COPY

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

(a) This Court appoints Tr.N.Balasubramanian, Retired District Judge, having office at Flat No.17, TNHB, Breeze Apartments, 2nd Street, Korattur, Chennai - 600 050, as a sole Arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of the partnership deed dated 01.04.2013;

(b) The Arbitrator shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996.

(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.

26.07.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
ab



WEB COPY



Arb.O.P.(Com. Div.) No.644 of 2022

ABDUL QUDDHOSE. J.,

ab

Arb.O.P.(Com. Div.) No.644 of 2022

26.07.2023