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Arb.O.P.(Comm.Div.)No.689 of 20__



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.06.2023

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.)No.689 of 2022

Mr.A.Pathmanaban

...Petitioner

Versus

1.Mr.M.Ramanathan
2.Mrs.Thangalagu

...Respondents

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the following reliefs:

(i) To appoint a sole arbitrator to adjudicate on the disputes between the petitioner and the respondent as per the provisions of the Arbitration and Conciliation Act, 1996; and

(ii) To award costs of the petition.

For Petitioner : Mr.Leelesh Sundaram
for M/s.Nathan and Associates

For Respondents : No Appearance



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ORDER

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') praying to appoint an Arbitrator, for adjudicating the disputes that have arisen between the petitioner and the respondents under the Partnership Deed dated 10.06.2019.

2. The learned counsel for the petitioner submitted that the petitioner and the respondents have started a partnership firm in the name and style of M/s.Venkateswara Paints Hardware and Electricals (hereinafter referred to as 'partnership firm') vide Partnership Deed dated 10.06.2019. As per the terms and conditions of the said Partnership Deed, the respondents are supposed to contribute 12.5% each towards the capital of partnership firm and jointly receive a sum of Rs.50,000/- as salary from the business of partnership firm. While so, the respondents have borrowed a sum of Rs.2,00,000/- (Rupees Two Lakhs only) from the petitioner, to meet their financial crises and so as to surrender the GST Certificate of the old



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business at the earliest. That apart, the respondents have borrowed a sum of Rs.1,71,00,478/- (Rupees One Crore Seventy One Lakhs Four Hundred and Seventy Eight only) as financial assistance from the petitioner, to sort out the debts in their old business and in order to start a fresh partnership business. However, even after clearing their dues, the respondents have not surrendered their GST certificate.

2.1. After a point of time, the respondents have locked the computers of petitioner in the partnership firm and curtailed him from entering into the business activities of the partnership firm. In such circumstances, petitioner came to know that the respondents have borrowed a sum of Rs.18,00,000/- (Rupees Eighteen Lakhs only) from his relative viz., Mr.Vallinayagam and promised his relative Vallinayagam that they would add him as a partner in the partnership firm. When the petitioner questioned the respondents about their borrowal of Rs.18,00,000/- from his relative, they threw him out of the business premises and threatened him with dire consequences. Aggrieved over the act of the respondents, the petitioner lodged a police complaint against them on 19.11.2021 before the CCB-I, Chennai which was registered as Crime No.208 of 2021. Thereafter, the petitioner repeatedly



requested the respondents to settle the borrowed amount, but, they did not come forward to settle the same.

2.2. The learned counsel also submitted that as per Clause 19 of the Partnership Deed, the dispute arose between the parties is arbitrable. For better appreciation, Clause 19 of the Partnership Deed dated 10.06.2019 is extracted hereunder:

“19. All the disputes in connection with the partnership shall be settled by arbitration.”

Therefore, the petitioner vide legal notice dated 30.11.2022, invoked Clause 19 of the Partnership Deed and called upon the respondents to accept the appointment of one Mr.S.Rajendra Kumar as Sole Arbitrator, for adjudicating the dispute between the parties, within 21 days from the receipt of that notice. However, there was no response from the respondents to the said legal notice. Hence, left with no other alternative, the petitioner has filed the present petition.

2.3. Further, the learned counsel submitted that though the petitioner made several requests to the respondents to repay the borrowed amount,



they did not come forward to repay the same. That apart, they prevented the petitioner from accessing his computers in the partnership firm and also, refused to allow him to participate in the business activities of the partnership firm. As per Clause 19 of the Partnership Deed, the dispute arose between the petitioner and respondents shall be settled by way of arbitration. Hence, the petitioner issued legal notice to the respondents and invoked Clause 19 of the Partnership Deed.

3. When the matter was taken up for hearing on 30.03.2023, the learned counsel appeared on behalf of the respondents sought time. At his request, the matter was adjourned to 20.04.2023. Accordingly, when the matter was taken up for consideration on 20.04.2023, the respondents' counsel sought time for filing the counter affidavit. Hence, this Court granted time to the respondents for filing the counter affidavit and adjourned the matter to 01.06.2023 (today). However, the respondents have not yet filed their counter affidavit. Today, when the matter was taken up for hearing in the forenoon session, there was no representation for the respondents. Therefore, the matter was passed over and called again in the afternoon session. Even in the afternoon session, none appeared on behalf



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of the respondents. This itself clearly shows that the respondents are not interested to contest the matter.

4. Heard the learned counsel for the petitioner and perused materials placed before this Court.

5. Upon perusing the materials available on record, it is seen that the petitioner and the respondents have entered into a Partnership Deed dated 10.06.2019. After entering into the said Partnership Deed, the respondents have borrowed money from the petitioner under one pretext or the other. When the petitioner requested the respondents to repay the borrowed amount, they refused him to participate in the day-to-day business activities of the partnership firm and also, prevented him from using his office equipments such computers, printers, etc. in the partnership firm. Hence, the aggrieved petitioner invoked Clause 19 of the Partnership Deed by way of issuing legal notice to the respondents, but, the respondents did not sent any reply to the said notice. Hence, the petitioner has knocked the doors of this Court with the present petition.



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6. Considering the above facts and circumstances of the case, this Court is satisfied with the submissions made by the learned counsel for the petitioner that the dispute involved herein is arbitrable as per Clause 19 of the Partnership Deed dated 10.06.2019. Hence, this Court is inclined to pass the following order:

(i) **Mr.S.Sathyamoorthy, Indian Audit and Account Services, Deputy CAG of India (Retired), B3, J.J.Terrace, Judge Jambulingam Road, Mylapore, Chennai – 600 004** is appointed as the Arbitrator to enter upon reference and adjudicate the dispute *inter se* the parties.

(ii) The learned Arbitrator shall pass award within a period of six months from the date of receipt of a copy of this order, only after issuing notice to the parties and hearing them.

(iii) The parties shall pay fees and other incidental charges to the learned Arbitrator fixed by him, equally.

(iv) In the event of non-appearance of the respondents before the learned Arbitrator, petitioner shall pay the entire remuneration and other expenses at first instance and thereafter, petitioner can recover the same directly from the respondents.



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7. Accordingly, this petition is ordered. The parties shall bear their own costs. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996, before the Arbitrator.

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Index : Yes/No

Speaking Order (or) Non Speaking Order

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KRISHNAN RAMASAMY, J.

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