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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2024

DELIVERED ON : 29.08.2024

CORAM:

THE HON'BLE MR.JUSTICE S.S.SUNDAR
and
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.4745 of 2024
and W.M.P.Nos.5180, 5181, 5244 of 2024

1.J.Krishnaveni,
Partner, M/s.Krishna Agro Tech,
No.6, GST Road, Mamandur,
Chengalpattu, Kanchipuram – 603 111, Tamil Nadu.

2.Mr.Jegadeesh Jeyaraj,
Partner, M/s.Krishna Agro Tech,
No.6, GST Road, Mamandur,
Chengalpattu, Kanchipuram – 603 111, Tamil Nadu.

3.Mr.Vijay Jeyaraj,
Partner, M/s.Krishna Agro Tech,
No.6, GST Road, Mamandur,
Chengalpattu, Kanchipuram – 603 111, Tamil Nadu.
Also at:-
No.61/18, Kamarajar Salai,
Raja Annamalaipuram, Chennai – 600 028,
Tamil Nadu

...Petitioners

vs.

Same Deutz Fahr India Private Limited,
Represented by Authorised Signatory,
Mr.P.Ramesh No.72/72M/73-77,
SIPCOT Industrial Complex,
Ranipet – 632 403, Tamil Nadu.



...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for records pertaining to the order passed by this Court in Arb.O.P.(Com.Div.)No.191 of 2023 dated 27.06.2023 in so far as appointing Hon'ble Mr.Justice M.Jaichandran, Former Judge of High Court of Madras as the Sole Arbitrator residing at D.No.422, South 2nd Main Road, Kapaleeshwar Nagar, Neelankarai, Chennai – 600 135 and quash the same as the said appointment was made obtained by playing fraud upon this Court.

For Petitioners : Mr.R.Ganesan
for Ms.Ashwini

For Respondent : Ms.Prapti Mehta
for M/s.Surana and Surana

ORDER

N.SENTHILKUMAR, J.

This writ petition has been filed for the issuance of a Writ of Certiorari to quash the order passed by a Learned Single Judge of this Court in Arb.O.P(Com.Div.)No.191 of 2023 dated 27.06.2023, wherein, Hon'ble Mr.Justice M.Jaichandran, Former Judge of High Court of Madras, was appointed as a Sole Arbitrator to adjudicate the disputes between the parties herein, alleging that the said appointment was



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obtained by playing fraud upon this Court.

2. The case of the petitioners is that they have formed an unregistered partnership firm in the name and style of M/s.Krisha Agro Tech and that it is a 'Partnership at Will'. The petitioners state that they are the partners of the said M/s.Krisha Agro Tech, where 2nd & 3rd petitioners of this writ petition are the Authorized Signatories as per Clause F of the deed. Their businesses had commenced from 25.02.2015 and they had sought for a dealership with the respondent for the sale of its tractors and spare parts.

3. The Respondent had filed Arb.O.P(Comm. Div.) No. 191 of 2023 before this Court under Section 11(6) of Arbitration and Conciliation Act, 1996 for the appointment of an Arbitrator. This Court, *vide* order dated 27.06.2023 had appointed Hon'ble Mr.Justice M.Jaichandran, Former Judge of the Madras High Court as a Sole Arbitrator to adjudicate the dispute between the parties.

4. It is seen from the records that there is no dispute that the parties herein entered into a Dealership Agreement dated 03.01.2018. Further, the respondent has issued a notice dated 05.12.2022 under



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Section 21 of Arbitration and Conciliation Act, 1996 to the petitioners and the same was received by the petitioners. Owing to a lack of reply, the respondents approached this Court under Section 11 of Arbitration and Conciliation Act. This Court ordered issuance of notice. Subsequently, the names of the petitioners were printed in the cause list. As no one appeared on behalf of the petitioners in the Section 11 proceedings, this Court passed an order appointing the Sole Arbitrator in the above Arbitration Original Petition.

5. The petitioners, having appeared in the arbitration proceedings, stated that they have filed a memo before the Tribunal that a sum of Rs.2,00,000/- towards Arbitrator's fees was deposited on 07.01.2024 via NEFT.

6. The main contention raised by the petitioners is that the first respondent in the Arbitration Original Petition is arrayed as “*M/s.Krisha Agro Tech, No.6, GST Road, Mamandur, Chengalpattu, Kanchipuram – 603 111*”. It is submitted by the counsel that the long and short cause title of Arb.O.P(Com.Div.)No.191 of 2023, the name of M/s.Krisha Agro Tech is mentioned without describing the proper signatory to receive



notice/summons. The petitioners contended that notice was not issued to them prior to the appointment of the Arbitrator. The petitioners further contended that the partnership firm lacks jural capacity to appoint counsel as the firm is not a registered firm as required under Section 69(3)(a) of the Indian Partnership Act, 1932. Under these circumstances, it is argued that a Vakalat could not be filed on behalf of the firm and that the respondent has deliberately played fraud upon the Court.

7. Registry has raised an objection with regard to maintainability of the writ petition. This Court directed the Registry to number the writ petition subject to maintainability keeping the maintainability question open. This Court was pleased to observe as follows:

“On the question of maintainability, notice was ordered to the respondent. It is open to the learned counsel for the petitioner to serve papers on the counsel who appeared for the respondent before the learned Judge in Arb.O.P.(Comm.Div.)No.191 of 2023.

8. It is seen that the learned counsel for the petitioners had made an endorsement, claiming to rely upon the judgment of a Constitution Bench of the Hon'ble Supreme Court in **SBP & Co. vs. Patel**



Engineering Ltd. and Another reported in (2005) (8) SCC 618 (“**Patel Engineering**”). The said endorsement, as available from the note placed before us by the Registry, is as follows:

“As per I Bench Supreme Court Judgment in case of SBP & Co Vs. Patel Engineering Ltd & another, Para 44 (vii) – Intra Court Appeal is maintainable and Appointment of Arbitrator U/s 11(6) of Act is an administrative, a Writ Petition under Article 226 of Constitution is maintainable.”

9. When the Writ Petition was listed before us, learned counsel for the petitioners relied upon the above-referred judgment in **Patel Engineering**, more specifically the following paragraph:

142 (xii) All appointments of Arbitral Tribunals so far made without issuing notice to the parties affected are held legal and valid. Henceforth, however, every appointment will be made after issuing notice to such person or persons. In other words, this judgment will have prospective operation and it will not affect past appointments or concluded proceedings.

10. Learned counsel for the petitioners relied on the above



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paragraph and contended that the petitioners have not received the notice on behalf of the firm. They further contended that the said Krisha Agro Tech is not an entity or a person who could engage a lawyer to defend the case before the Tribunal.

11. The respondent filed a detailed counter affidavit denying the averments of the petitioners and submitted that the writ petition challenging the appointment of Arbitrator made by this Court under Section 11(6) of Arbitration and Conciliation Act, 1996 is not maintainable. According to the respondents, the only remedy available to the petitioners is to participate in the arbitration proceedings and subsequently challenge the arbitral award under Section 34 of the Act, if aggrieved. It is pointed out that due to inadvertence, the firm was shown as a party without being represented by one of the partners.

12. The petitioners have filed the present writ petition challenging the order in the above Arbitration Original Petition. It is relevant to note that the petitioners herein are the 2nd – 4th Respondents in the above Arbitration Original Petition, who are none other than the partners of the first respondent.



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13. The case of the petitioners to maintain a writ petition cannot be countenanced as no legal injury to the petitioners is pleaded or established to entertain the writ. It is clear that this Court has only appointed Hon'ble Mr.Justice M.Jaichandran as Sole Arbitrator to adjudicate the dispute between the parties. The petitioners who are aware of the order passed in Arb.O.P (Com.Div.)No.191 of 2023 dated 27.06.2023, have very well participated in the arbitration proceedings.

14. Irrespective of the Petitioners' contentions recorded above, the sole point to be decided is whether the present Writ Petition challenging an order passed by a Learned Single Judge of this Court under Section 11 of the Arbitration and Conciliation Act, 1996 is maintainable.

15. The endorsement made in this Writ Petition, relying on ***Patel Engineering***, to contend that this Writ Petition is maintainable, runs contrary to what was held by the Constitution Bench of the Hon'ble Supreme Court, and the same is as follows:

“47. We, therefore, sum up our conclusions as follows:

(i) The power exercised by the Chief Justice of the High Court or the Chief Justice of India



under Section 11(6) of the Act is not an administrative power. It is a judicial power.”

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16. It is to be noted that the above paragraph forms part of the majority opinion which held that the power exercised in appointing an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 is judicial in nature and not administrative. The following paragraph in Patel Engineering supports the finding extracted supra:

“36. Going by the above test it is seen that at least in the matter of deciding his own jurisdiction and in the matter of deciding on the existence of an arbitration agreement, the Chief Justice when confronted with two points of view presented by the rival parties, is called upon to decide between them and the decision vitally affects the rights of the parties in that, either the claim for appointing an Arbitral Tribunal leading to an award is denied to a party or the claim to have an arbitration proceeding set in motion for entertaining a claim is facilitated by the Chief Justice. In this context, it is not possible to say that the Chief Justice is merely exercising an administrative function when called upon to appoint an arbitrator and that he need not even issue notice to the opposite side before appointing an arbitrator.”

17. Whereas, the counsel for the petitioners has made the above endorsement, relying on the sole dissenting opinion authored by Hon’ble Mr. Justice C.K. Thakker, which is as follows:



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“142. On the basis of the above findings, my conclusions are as under:

(i) The function performed by the Chief Justice of the High Court or the Chief Justice of India under sub-section (6) of Section 11 of the Act (i.e. the Arbitration and Conciliation Act, 1996) is administrative, pure and simple, and neither judicial nor quasi-judicial.”

18. While ***Vidya Drolia v. Durga Trading Corporation*** reported in (2021) 2 SCC 1 confirmed that the judgment in ***Patel Engineering*** was inapplicable in so far as the scope of judicial review of the Courts under Section 8 and Section 11 of the Act, the ruling on the nature of powers and functions exercised by the Court in appointing an arbitrator, in ***Patel Engineering*** continues to hold the field. As held by the Constitution Bench judgment, the powers under Section 11(6) of Arbitration and Conciliation Act is judicial in nature and not administrative.

19. It is settled law that a judicial order passed by a learned Single Judge of the High Court cannot be assailed by way of a Writ Petition under Article 226 of the Constitution of India. In this regard, the judgement of the Hon’ble Supreme Court in ***Neelam Manmohan Attavar v. Manmohan Attavar (Dead) Through L.Rs***, reported in (2021) 16



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SCC 536, squarely applies:

“11. ..., we are of the view that a writ petition under Article 226 of the Constitution would not be maintainable in order to challenge an order which has been passed by the High Court in the exercise of its judicial powers. In the present case, the High Court has exercised its revisional jurisdiction. Merely assailing the order as an order which is void would not enable a litigant to avoid the consequences which emanate from the order, by instituting a writ petition under Article 226. A litigant is not without her remedies. An order which has been passed by the High Court can either be assailed in a letters patent appeal (in those cases where the remedy of a letters patent appeal is available in law) or by way of a review (where the remedy of a review is available in a certain class of matters). A remedy is available to a litigant against a judicial order of the High Court passed in revisional proceedings, under Article 136 of the Constitution before this Court.”

20. There is no doubt that the order sought to be impugned in the present Writ Petition is a judicial order. Therefore, the present writ



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petition under Article 226 challenging an order of appointment of Arbitrator is not maintainable and the writ petition is liable to be dismissed.

21. It is unfortunate that, with intent to mislead the registry, an endorsement was made by relying upon the dissenting opinion of the judgment cited supra. The filing of the present Writ Petition is clearly a delaying tactic, with an intention to frivolously protract, deviate and derail the proceedings initiated under Arbitration and Conciliation Act, 1996.

22. In the result, the writ petition is dismissed with a cost of Rs.25,000/-. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R.,J) (N.S.,J)
29.08.2024

Index: yes
Speaking order:yes
Neutral Citation:yes
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