IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
12.09.2024	19.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

Arb.O.P.(Comm.Div.)No.245 of 2024

1.P.Sengodan
Partner
M/s.Sri SPK Real Estate,
No.10, CHB Colony,
Street 8, Velur Road,
Tiruchengode, Nammakkal District,
Pincode – 637 211.

2.A.SE.Angkammal
(earlier known as A.S.Angammal)
Partner
M/s.Sri SPK Real Estate,
No.10, CHB Colony,
Street 8, Velur Road,
Tiruchengode, Nammakkal District,
Pincode – 637 211.

3. M/s.Sri SPK Real Estate,
No.10, CHB Colony,
Street 8, Velur Road,
Tiruchengode, Nammakkal District,
Pincode – 637 211. ... Petitioners

Vs

1.A.S.Suganthi,
Partner (Erstwhile),
M/s.Sri SPK Real Estate,
2/75, Kudi Street,
Thokkavadi,
Tiruchengode, Nammakkal District,
Pincode – 637 211.

2.A.S.Prabu,
(earlier known as A.S.Prabu Kumar)
Partner (Erstwhile),
M/s.Sri SPK Real Estate,
No.10, CHB Colony,
Street 8, Velur Road,
Tiruchengode, Nammakkal District,
Pincode – 637 211. ... Respondents

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

a) Appoint a Sole Arbitrator to adjudicate the disputes between the Petitioners and the Respondents.

b) Direct the respondents to pay costs and thus render justice.

For Petitioners	:	Mr.G.Kalyan Jhabakh for M/s.Surana & Surana
For Respondents	:	Mr.R.Srinivas, Senior Counsel for Mr.M.Santhanaraman for R1
		Mr.C.Vigneswaran for R2

ORDER

This O.P. had been filed seeking for an appointment of an Arbitrator to resolve the dispute that had arisen between the parties pursuant to the Partnership Deed dated 18.06.2003.

2. Heard Mr.G.Kalyan Jhabakh, learned counsel for M/s.Surana & Surana for the petitioners, Mr.R.Srinivas, learned Senior Counsel for Mr.M.Santhanaraman, learned counsel for first respondent and

Mr.C.Vigneswaran, learned counsel appearing on behalf of the second respondent.

3. Mr.G.Kalyan Jhabakh, learned counsel for the petitioners would contend that the first and second petitioners had been carrying on various business and that the petitioners 1 and 2 being husband and wife and the first and second respondents being daughter and son had formed a partnership in the name and style of M/s.Sri SPK Real Estate, the third petitioner herein by a Partnership Deed dated 18.06.2003. As per the terms of the Partnership Deed, the respective parties were entitled to their respective shares. The Partnership was flourishing and at that point of time, the first respondent and husband started to create family issues and was putting spokes in the functioning of the Partnership. Hence, a family arrangement was entered into between the parties namely the first and second petitioners and the respondents.

4. As per the said family arrangement schedule C of the properties was given to the petitioners, schedule A to the first respondent and Schedule B to the second respondent. In spite of the said family arrangement, the first respondent had forced the first petitioner to enter into a Panchayat Muchalika, dated 27.09.2015, in which the petitioners had agreed to pay a sum of Rs.15 Crores to the first respondent to settle all her claims in the third petitioner Partnership firm within a period of one year and on such payment, the first respondent has

also agreed to resign from the Partnership leaving the Partnership to be carried on by the first & second petitioners along with the second respondent. Since the first petitioner was not able to make the payment as per the time-line and pursuant to the further discussions on 28.08.2020, an additional sum of Rs.2 Crores was agreed to be paid by the first petitioner to the first respondent and the first respondent had also agreed to receive the same as a full and final settlement for her to leave the Partnership.

5. Pursuant to the said agreement, a sum of Rs.13.90 Crores was paid by the first petitioner to the first respondent and when the balance sum of Rs.3.1 Crores was sought to be paid, the first respondent without agreeing to receive the payment had started to harass the first petitioner with an intention to grab more lands of the firm to unjustly enriched herself. In view of the same, the smooth functioning of the Partnership firm came to a stand still and the first respondent has obstructed the third petitioner from disposing the properties for the benefit of the Partnership. Hence a notice invoking provisions of Section 21 of the Arbitration and Conciliation Act (hereinafter referred to as “the Act”) was issued by the petitioners on 28.11.2023, invoking the clause of arbitration provided under Partnership Deed dated 18.06.2003. A reply had been received from the first respondent indicating that she cannot agree for arbitration, since already action has been initiated for fabrication of records by the petitioners which included forging her signature and selling of the land without any

resolution and by manipulating certain resolution without the signature of the first respondent. He had also further contended that a fabricated reconstitution of the Partnership Deed had also been effected by the petitioners and hence, he would submit that the present application had been filed seeking for appointment of an Arbitrator by this Court.

6. Mr.R.Srinivas, learned Senior counsel appearing on behalf of the first respondent would contend that a fraud had been played by the petitioners by creating a fabricated and forged resolutions. Without the consent or knowledge of the first respondent by perpetuating fraud committed by the petitioners and the first respondent, the properties had been sold to the third party creating third party rights. Hence, firstly the issue could not be referred to Arbitration as it involves third party rights. Secondly, he would contend that the dispute is not arbitrable. By a family arrangement in the year 2015, the Partnership Deed had been novated. As per the said family arrangement, one year time was granted for making the payment to the first respondent and that had also not been fulfilled by the first petitioner. He would further submit that by entering into Panchayat Muchalika, the first petitioner had also novated the terms of the Partnership Deed and therefore, if the time period for invoking the clause under Section 21 of the Act would begin from the date of such Muchilika and the invocation of the Section 21 of the Act in the year 2023 is much beyond the period of limitation, as the Hon'ble Apex Court has held that Article 137 of the

Limitation Act would be applicable, even for invocation of Section 21 of the Act.

7. He would further contend that when fraud had been played by the petitioner, the same could not be resolved by referring the matter for Arbitration as the Arbitrator does not has jurisdiction to deal with the issue of fraud and the same could be dealt with only by a competent Court. He would submit that the petitioners have forged the signatures of the first respondent and had created the resolutions by which they had sold the properties to 100 of purchasers and that since the purchasers are not party to the Partnership Deed, the Arbitrator cannot decide the dispute which could be raised by the third parties. He would further submit that an FIR had been filed against the first & second petitioners and the second respondent for the offences punishable under Section 120B, 465, 469, 468, 471, 420, 409 and 109 IPC and the Criminal O.P filed by the petitioners to quash the said FIR, this Court had held that the petitioners are liable to be investigated upon on the complaint. The petitioners had attempted to register the reconstituted Partnership, which was cancelled by the Registering Authorities which was also the matter of challenge in Writ Petitions in W.P.Nos.21535 & 21570 of 2023, which came to be dismissed by this Court. Hence, the issue cannot be resolved by the Arbitrator and the much water had flown in the dispute that had arisen out of the Partnership Deed and therefore, prays this Court to dismiss the Arbitration Original Petition. He had also relied

upon various judgments of the Hon'ble Apex Court to drive home his contentions viz.,

a) reported in (2021) 4 SCC 379

b) reported in (2016) 10 SCC 386

c) reported in (2021) 4 SCC 713

d) reported in (2021) 4 SCC 786

e) reported in (2024) 5 SCC 313

8. Mr.C.Vigneswaran, learned counsel appearing on behalf of the second respondent would submit that if the matter could be referred to the Arbitration, the dispute could be resolved with regard to the Partnership firm and hence, he would seek this Court to appoint an Arbitrator.

9. I have considered the rival submissions made by the learned counsel appearing for their respective parties and perused the materials placed on record.

10. The petitioners have approached this Court to appoint an Arbitrator in terms of the Arbitration clause in the Partnership Deed dated 18.06.2003, on the dispute that had arisen between the partners. It is the case of the first respondent that the petitioners had committed fraud on third parties by forging the signature of the first respondent by creating fabricated resolutions, as if the first respondent had agreed to sell the properties. The first respondent had also

heavily relied upon the Panchayat Muchilika entered between the first petitioner and herself to contend that the Partnership Deed had been novated. The learned counsel for the first respondent had also relied upon the family arrangement in which the respective parties to the family arrangement have been allotted shares in the property.

11. He had further contended that these documents would itself suffice that the partners who are the family members had agreed to novate the Partnership Deed and give a quietus to the partnership. I had also gone through the family arrangement that had been entered into between the first & second petitioners and the respondents. The family arrangement envisages an the parties would be allotted the Schedule mentioned properties which had been agreed to be taken upon by the parties. The Panchayat Muchilika dated 27.09.2015 envisages the arrangement between the first petitioner and the first respondent. Under the said Panchayat Muchilika, the first petitioner had agreed to pay a sum of Rs.15 Crores to the first respondent and that on receipt of such payment, the first respondent had agreed to walk away from the partnership of the third petitioner. The said Panchayat Muchilika had been further novated by agreeing a further sum of Rs.2 Crores in addition to the Rs.15 Crores agreed upon by the first petitioner and the first petitioner had also paid a sum of Rs.13.90 Crores to the first respondent which had not been disputed by the first respondent. All that is remain to be paid by the first petitioner is a sum of

Rs.3.10 Crores as per the Panchayat Muchilika, upon which the first respondent had agreed to resign from the partnership. It is the case of the first petitioner that he was willing to pay the said amount. But, it is the case of the first respondent that no such attempt had been made.

12. Be that as it may, the Panchayat Muchilika entered between the first petitioner and the first respondent cannot be put against the second & third petitioners and the second respondent as they are not parties to such Muchilika. It was an agreement between the first petitioner and the first respondent that on payment of certain amount, the first respondent will walk away from the partnership which would only mean that the partnership would continue to subsist without the first respondent subject to payment of certain amount by the first petitioner. Even though various claims of fraud had been alleged against the first & second petitioners and the second respondent by creating third party interest, if there is any right to such third party it would be only against the partnership firm and that such dispute cannot be termed as a dispute within the partnership firm. Therefore, the fraud that had been alleged which would act against the third parties cannot stand in the way of appointing an Arbitrator for resolving the dispute that had arose between the partners in the third petitioner firm.

13. Further, even if the allegation of the fraud made by the first respondent

against the first & second petitioners are proved, they may be punishable for the offences under the criminal complaint lodged by the first respondent that would not preclude the rights of the parties from claiming their shares under the partnership deed dated 18.06.2003. Even accepting the arguments of the learned Senior Counsel for the first respondent that the Arbitrator cannot decide the issue of fraud, the Arbitrator dehors the fraud committed by the first & second petitioners and the second respondent can arbitrate the disputes between the parties dehors the family arrangement and the Panchayat Muchilika that had been entered between the first petitioner and the first respondent.

14. The various judgments relied upon by the learned Senior Counsel appearing on behalf of the first respondent could not be of any help to the first respondent. Since, I have already concluded that the partnership continued to subsist, even if the Panchayat Muchilika is implemented in its letter and spirit as the Panchayat Muchilika itself envisages that the first respondent would walk out of the partnership firm. Since, the terms of the Panchayat Muchilika had not been allegedly fulfilled by the first petitioner, the partnership continued to subsist. The contention of the learned Senior Counsel that the breaking point for counting limitation for invocation of Section 21 of the Act would start from 27.09.2015 when the Panchayat Muchilika was entered upon, in my considered view is wholly falacious.

15. It is also to be noted that the judgment of the Hon'ble Apex Court reported in (2021) 4 SCC 713 had laid down a twin test with regard to the allegations of the fraud. The first test is that the fraud should be such that one of the parties to the contract would not have entered into such a contract but for the fraud committed by the other party. The second test is that the fraud should be a question arising from the public domain. In the present case, it is not the case of the first respondent but for the fraud committed by the first & second petitioners would not have consented for being a partner in the third petitioner firm and the question of public domain which has been sought to be driven home to by the learned Senior Counsel would not be between the parties to the contract namely the Partnership Deed, but the alleged fraud that had been committed by the third petitioner's firm against the third parties. If such fraud had been committed by the third petitioner firm against the third parties then it is for the third parties to make the claim against the partnership firm and that would not preclude the Court from holding that the agreement is arbitrable.

16. I have already held that the partnership subsists even as on this day. It is also to be noted that when the partnership was reconstituted leaving out the first respondent, the first respondent herself had challenged it before the District Registrar and the District Registrar had set aside the registration of the reconstituted partnership firm and affirmed by this Court in the Writ Petition filed by the first and second petitioners. Even on that score, the partnership

firm still subsists.

17. In such an event, I have come to the conclusion that the petitioner are entitled to invoke the provisions of Section 21 of the Act to refer the matter for arbitration invoking the Clause 11 of the Partnership Deed dated 18.06.2003.

18. In such circumstances, this Court is inclined to appoint ***Hon'ble Mr.Justice N.Kirubakaran, Former Judge of this Court residing at No.36, 2nd Cross Street, Rayala Nagar, Ramapuram, Chennai – 600 089*** as Sole Arbitrator to enter upon the dispute between the petitioners and the respondents.

19. The learned Sole Arbitrator is entitled to fix his fees as per the Schedule-IV to the Act. This Court further requests the learned Sole Arbitrator to endeavour to decide the dispute as expeditiously as possible.

20. Accordingly, this O.P. is allowed. There shall be no order as to costs.

Gba 19.12.2024
Index :Yes/No
Speaking Order/Non Speaking Order

K.KUMARESH BABU, J.

Gba

Arb.O.P.(Comm.Div.) No.245 of 2024

19.12.2024