



O.P. No.64 of 2015 & Arb.O.P.(Com.Div.) No. 173 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.12.2024

Pronounced on : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

O.P.No.64 of 2015 & Arb.O.P.(Com.Div.) No.173 of 2021
and Appln.Nos.637 of 2015, 3708 of 2016 & 59 of 2020

O.P.No.64 of 2015:

R.Shanmugasundaram

... Petitioner

vs.

1.Arjun Fireworks Industries,
Rep by its Partner M.Malleeshwari,
Door No.1/187A, E.B.Colony,
Sivakasi Taluk,
Virudhunagar District – 626 131.

2.M.Malleeshwari

3.T.Rajalakshmi

4.Mr.Justice A.Thangamani

... Respondents

PRAYER: Arbitration Original Petition filed under Sections 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 15.10.2014 passed by the Arbitral Tribunal, namely the 4th respondent



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herein between the petitioner and the respondents 1 to 3 in the matter of agreement dated 31.01.2007 and in the matter of Arbitration and Conciliation Act, 1996, insofar as the dismissal of all other reliefs asked for in the statement of claim.

For Petitioner : Mr.S.Subbiah
Senior Counsel
for Mr.P.Raja

For Respondents : Mr.S.Nambi Arooran
for M/s.Ajmal & Associates

Arb.O.P.(Com.Div.).No.173 of 2021:

1.Arjun Fireworks Industries,
Rep by its Partner M.Malleshwari,
Door No.1/187A, E.B.Colony,
Sivakasi Taluk,
Virudhunagar District – 626 131.

2.M.Malleshwari

3.T.Rajalakshmi

... Petitioners

vs.

R.Shanmugasundaram

... Respondent

PRAYER: Arbitration Original Petition filed under Sections 34 of the

2/21



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Arbitration and Conciliation Act, 1996, to set aside the award dated 15.10.2014 passed by the Sole Arbitrator between the petitioners 1 to 3 and the respondent in the matter of the agreement dated 31.01.2007.

For Petitioners : Mr.S.Nambi Arooran
for M/s.Ajmal & Associates

For Respondent : Mr.S.Subbiah
Senior Counsel
for Mr.P.Raja

COMMON ORDER

Both the above Arbitration Original Petitions have been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the award dated 15.10.2014, aggrieved by certain portions of the award, which are detrimental and against the interests of the respective petitioners.

2.For the sake of convenience, the petitioner in O.P.No.64 of 2015 being the earlier original petition shall be referred to herein after as the petitioner and the petitioners in Arb.O.P.(Com.Div.) No.173 of 2021 shall be referred to as the respondents.



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3. Brief facts leading to the above Original Petitions as follows:

(i) The petitioner is a partner holding 10% of share in the partnership firm along with the respondents ever since 09.06.1997. The license for fireworks stood in the name of the petitioner and hence, he was inducted as a partner and the respondents' share in the said partnership firm was 45% each. The disputes arose in and about 2009 and on 08.03.2010, the petitioner caused a legal notice, demanding the respondents to render true and proper accounts and also settle his share in the firm.

(ii) According to the petitioner, despite the said notice having been received by the respondents, the respondents neither sent any reply nor settled the issue. Hence, the petitioner was constrained to issue a second notice on 08.04.2010, which was received by the first respondent. Thereafter, the parties agreed to settle the disputes through arbitration by invoking clause 15 of the Partnership Deed, which provided for resort to arbitration, in the event of disputes arising amongst the parties.

(iii) The arbitrator one Mr.S.Ramar, appointed by the petitioner being



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related to the petitioner, was objected to by the respondents and hence, the said arbitration did not proceed any further. The petitioner herein also filed a suit in O.S.No.96 of 2011 before the District Munsif Court, Sattur, seeking relief of a permanent injunction restraining the respondents from interfering with the petitioner's right as a partner and participating in the business of the first respondent's firm. However, the said suit was not prosecuted and the same was dismissed for default. In the interregnum period, the son of the second respondent, Prem Kumar was inducted as a partner and the first respondent firm by name, Arjun Fireworks Industries came into existence on 09.02.2012. An application was moved for transfer of license for the fireworks from the name of the petitioner to the third respondent's name. The DRO also processed the said request and the third respondent also passed an order granting the license in the name of the third respondent, thereby revoking the license in the name of the petitioner. O.P.No.700 of 2010 was filed before this Court and a retired judge of this Court was appointed as the Sole Arbitrator.

4.Before the learned Arbitrator, the petitioner examined himself as



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P.W.1 and Exhibits C1 to C30 were marked on his side and the second respondent was examined as R.W.1 and her husband was examined as R.W.2 and Exhibits R1 to R23 were marked on their side. After considering the respective contentions advanced by the parties, including the evidence available on record, the learned arbitrator proceeded to pass an award on 15.10.2014.

5.Both the petitioner as well as the respondents, aggrieved over different portions of the award, have preferred the above O.P.No.64 of 2015 and Arb.O.P.(Com.Div.) No.173 of 2021 respectively.

6.I have heard Mr.S.Nambi Arooran, learned counsel for M/s.Ajmal Associates appearing for the petitioners in Arb.O.P.(Com.Div.) No.173 of 2021 and respondents in O.P.No.64 of 2015 and Mr.S.Subbiah, learned Senior Counsel for Mr.P.Raja, learned counsel for petitioner in O.P.No.64 of 2015 and respondent in Arb.O.P.(Com.Div.) No.173 of 2021. I have also gone through the records placed before me by way of typed set of papers as well as the impugned award under challenge.



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7.Mr.S.Subbiah, learned Senior Counsel appearing for the petitioner would make common submissions in both the OP's and would mainly contend that the arbitrator has passed a well reasoned order, after considering the evidence available on record excepting two areas which according to the learned Senior Counsel requires interference by this Court. The learned Senior Counsel would point out to the issue Nos.11 and 13 which were framed by the learned arbitrator. He would further submit that the fact that the petitioner had given consent for transfer of the license would not stand in the way of his seeking a relief to restore the license in the petitioner's name. He would also state that the arbitrator erred in fixing the period 31.01.2007 to 12.10.2013 as the period for rendition of accounts and for determining the share of profits due to the petitioner. Apart from these two aspects, the learned Senior Counsel would submit that there is no infirmity in the award and none of the grounds under Section 34 of the Arbitration and Conciliation Act are available to the respondents to challenge the award.

8.The learned Senior Counsel would also place reliance on the



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decisions of the Hon'ble Division Bench of this Court in *Rajalakshmi and Another Vs. Sarojini* recorded as *Legal Representatives of the deceased 1st defendant and Another* reported in 2011 (1) CTC 546 and in *A.Fathima Faridunnissa Vs. T.A.H.Zubaida Ammal and Others* reported in 2020-1-LW. 268, where, the learned Single Judge of this Court relied on the Division Bench judgment in *Rajalakshmi's case* (as stated supra).

9.The learned Senior Counsel, referring to the said decisions, would submit that under the Partnership Act, the continuing partners under a new firm carrying the goodwill of the old firm will be liable to render accounts even after dissolution of the firm on the demise of one of the partners. The ratio laid down in both the cases is that even post formation of a new partnership firm, the question of rendering accounts cannot be limited to the date of the earlier firm getting dissolved and it would continue as long as the goodwill is subsisting.

10.The learned Senior Counsel would also place reliance on the



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decision of the Hon'ble Supreme Court in *Delhi Airport Metro Express Private Limited Vs. Delhi Metro Rail Corporation Limited* reported in (2022) 1 SCC 131, where the Hon'ble Supreme Court has held that one of the principal objects with which the Arbitration and Conciliation Act, 1996 was promulgated is to minimize the supervisory role of Courts in the arbitral process and judicial interference with arbitral awards should be strictly limited to available grounds under Section 34 of the Arbitration and Conciliation Act. The Hon'ble Supreme Court further held that when particular view was possible, based on the available material and such view had been taken by the learned Arbitrator, then the High Court exercising power under Section 34 of the Arbitration and Conciliation Act, cannot assume a different view possible and interfere with the award. The learned Senior Counsel would therefore pray for O.P.No.64 of 2015 being allowed and Arb.O.P.(Com.Div.) No.173 of 2021 being dismissed.

11.Per contra, Mr.S.Nambi Aroran, learned counsel for the respondents would first and foremost contend that the partnership was one at will. He would further submit that the property in which the business was



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originally carried on was also belonging to the petitioner and the same was purchased by the respondents 2 and 3 on 04.10.2006. Thereafter, within a lapse of few months, the firm was reconstituted and the third respondent was inducted. He would further refer to the application for cancellation of license and the order passed transferring license to the second respondent in 2009. He would further submit that the petitioner appeared in person and consented for such transfer of the license and therefore, it was not open to him therefore seek a relief in the arbitration proceedings that the said license should be re-transferred in the name of the petitioners. In this regard, the learned counsel for the respondents would further submit that the learned Arbitrator has rightly considered the evidence on record, admissions of the petitioner himself and negatived such prayer.

12. With regard to the issue relating to rendition of accounts, he would submit that being a partnership at will and the partnership admittedly having been dissolved by notice dated 12.10.2013, the petitioner cannot be entitled to share in the profit beyond the said date. Therefore, no interference is warranted with regard to said finding of the arbitrator. As regards, the claims



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allowed by the arbitrator in favour of the petitioner, which are under challenge in Arb.O.P.(Com.Div.) No.173 of 2021, the learned counsel for the respondents would state that the disputes arose even in 2009, at which point, the license in the name of the petitioner was sought to be cancelled and therefore, the learned Arbitrator ought to have rendered a finding that the partnership was dissolved in 2009 itself.

13.The learned counsel for the respondents would further submit that the petitioner has not approached the Court with clean hands and even pending the arbitration O.P, the petitioner had filed a Civil Suit before the District Munsif Court, Sattur, in O.S.No.96 of 2011 and the said suit for injunction was also not diligently prosecuted and the petitioner allowed the said suit to be dismissed for default. The learned counsel for the respondents would further submit that the entire books of accounts have been filed before this Court, obeying the orders passed in the interlocutory stage of the above original petitions.

14.Attacking the award, insofar as the claims allowed in favour of the



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petitioner, the learned counsel for the respondents would submit that the petitioner was expelled from the firm with effect from 16.11.2009 and thereafter, he seems to be a part of the first respondent firm and consequently, the petitioner had not right to seek for arbitration and consequently, the award of the sole arbitrator is invalid and not binding on the respondents. He would therefore pay for dismissal of the O.P.No.64 of 2015 and for Arb.O.P.(Com.Div.) No.173 of 2021 being allowed.

15.I have carefully considered the arguments advanced by the learned counsel on either side.

16.With regard to the contentions raised by Mr.S.Subbiah, learned Senior Counsel challenging portions of award in O.P.No.64 of 2015, the arguments is two fold, one pertaining to restriction of the period up to 12.10.2013 for rendition of accounts and secondly, the consent given by the petitioner having no effect on the claim before the learned Arbitrator regarding re-transfer of the license. With regard to first contention regarding the rendition of accounts, the learned Arbitrator has passed an award



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directing the respondents to render true and proper accounts for the period 31.01.2007 to 12.10.2013.

17. According to the learned Senior Counsel, relying on the decisions referred herein supra, the learned Arbitrator erred in fixing the date of dissolution as the end date for rendition of accounts and the learned Arbitrator, instead, ought to have directed rendition of accounts till the actual date of dissolution which involved further process for taking accounts, ascertaining profits and losses, etc., and arriving at the amounts payable to the petitioner.

18. I am unable to countenance the said submission of the learned Senior Counsel. In fact, the decision of the Hon'ble Division Bench was a case which was entirely on different facts. One of the partners had died and the firm was continued by the other partners. The legal heirs of the deceased partner claimed share in the profits and in such circumstances, the Hon'ble Division Bench held that the legal heirs of the deceased partner would be entitled to goodwill and consequently, rendition of accounts, even after



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dissolution of the firm on the demise of one of the partners. Following the said decision, the learned Single Judge of this Court in *A.Fathima Faridunnissa'* case held that till passing of final decree pursuant to the preliminary decree, the liability continue to exist. The facts of the said case also cannot be equated to the facts of the present case.

19.The learned Arbitrator has dealt with in great detail with regard to the factum of dissolution of the firm.

20.According to the respondents, the petitioner was expelled from the firm even in the year 2009. However, the learned Arbitrator after considering the entire pleadings and evidence before him, arrived at a categorical finding that the alleged expulsion in 2009 was neither proper nor established and placing reliance on Ex.C25, notice, the learned Arbitrator fixed the date of dissolution of the firm on 12.10.2013. Therefore, the partnership, being one at will, the petitioner cannot be entitled to seek rendition of accounts for a date subsequent to the dissolution of the firm. All accounts entitling the petitioner to profits can only be between 31.01.2007, the commencement of



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the partnership firm and 12.10.2013, the date of dissolution of the firm.

Therefore, the learned Arbitrator has rightly awarded the relief of rendition of accounts from Exs.C3 to C25 period and there is absolutely no illegality or perversity in the findings arrived at by the learned Arbitrator warranting interference under Section 34 of the Arbitration and Conciliation Act, 1996.

21.Coming to the next contention of the learned Senior Counsel with regard to consent also, the learned Arbitrator has also referred to the evidence of the petitioner as P.W.1 and found that only with his consent, the license for fireworks was transferred and that he was physically present before the DRO on the date on which the transfer of license was effected. Here, the learned Arbitrator also recorded the admission of the petitioner that he signed before the DRO expressing consent for transfer of license and rightly found that the claim of license being transferred behind his back was totally untenable. The said finding is also based on available material before the Arbitrator and the same does not warrant any interference. Hence, I do not find any grounds to interfere with the award insofar as O.P.No.64 of 2015.



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22.Coming to Arb.O.P.(Com.Div.) No.173 of 2021, the case of the respondents is that the petitioner was expelled even in 2009 from the partnership firm and therefore, he was not entitled to seek for arbitration invoking the arbitration clause in the partnership deed. The learned Arbitrator has also discussed the said contentions advanced by the respondents before him and render a categorical finding that the respondents have miserably failed to prove that the petitioner was expelled even in 2009 and rightly concluded that under only Ex.C25, the partnership at will was dissolved and consequently, I do not find any justifiable reason to interfere with the said findings returned by the learned Arbitrator. Therefore, Arb.O.P.(Com.Div.)No.173 of 2021 is also liable to be dismissed.

23.As already discussed by the Hon'ble Supreme Court in *Delhi Airport Metro Express Private Limited's case*, I do not find any of the grounds under Section 34 present in the instant cases, necessitating interference and consequently, both the arbitration original petitions are liable to be dismissed.



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24.For all the above reasons, both the original petitions in O.P.No.64 of 2015 and Arb.O.P.(Com.Div.)No.173 of 2021 are dismissed. However, the parties shall bear with their respective costs. Connected applications are also closed.

13.12.2024

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Index : Yes / No

Internet : Yes / No

List of Witnesses on the side of the claimant:

P.W.1 – R.Shanmugasundaram

List of Exhibits on the side of the plaintiff:

<i>Sl.Nos.</i>	<i>Exhibits</i>	<i>Description</i>
1.	C1	Arjun Fire Works Industries, License No.40/97.
2.	C2	Registration of Firm dated 04.07.1997
3.	C3	Partnership Deed dated 31.01.2007
4.	C4	Sale Deed executed by R2 & R3 dated 08.11.2010.
5.	C5	Sale Deed executed by R2 and R3 dated 08.11.2010.
6.	C6	Notice dated 18.01.2013.
7.	C7	Proceedings of the DRO dated 20.02.2009.
8.	C8	Letter by the Deputy Chief Controller of Explosives dated



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<i>Sl.Nos.</i>	<i>Exhibits</i>	<i>Description</i>
		26.11.2012.
9.	C9	Letter by the Joint Controller of Explosives dated 18.12.2012.
10.	C10	Objection sent by the claimant to the Controller of Explosives dated 02.01.2013.
11.	C11	Release Deed executed by the claimant and the respondents dated 09.02.2012.
12.	C12 & C13	Legal notices dated 08.03.2010.
13.	C14 & C15	Legal notices dated 08.04.2010.
14.	C16 & C17	Legal notices dated 23.04.2012.
15.	C18	Arbitration Notice dated 12.04.2010.
16.	C19	Letters sent by the respondents.
17.	C20.	FIR Copy dated 23.04.2012.
18.	C21	Judgment copy dated 29.10.2013.
19.	C22	FIR Copy dated 12.06.2013.
20.	C23	Judgment copy dated 24.07.2013.
21.	C24	Legal notice dated 12.10.2013
22.	C25	Legal notice dated 15.03.2014.
23.	C26	Letter from R2 dated 18.07.2012.
24.	C27	Legal notice from R2 & R3 dated 15.03.2014.
25.	C28	Notice to claimant dated 15.03.2014.
26.	C29	Notice to claimant dated 15.03.2014.
27.	C30	Notice from R2 dated 16.05.2011.



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List of Witness examined on the side of the Respondents:

R.W.1 – M.Maleeswari

R.W.2 – R.Mariappan

List of exhibits marked on the side of the Respondents:

<i>Sl.Nos.</i>	<i>Exhibits</i>	<i>Description</i>
1.	R1	Sale Deed executed by P.W.1 to R2 & R3 dated 04.10.2006.
2.	R2	Plaint copy of O.S.No.96/11.
3.	R3	Form – A dated 26.03.2008.
4.	R4	DRO's Order dated 20.02.2009.
5.	R5	Communication by R2 to DRO.
6.	R6	Notice from R2 to Commissioner dated 16.05.2011.
7.	R7	Show Cause notice by R2 to P.W.1 dated 06.01.2012.
8.	R8	Communication by R2 to P.W.1 dated 25.02.2012.
9.	R9	Pre-Assessment Notice dated 31.01.2012.
10.	R10	Expulsion Deed dated 09.02.2012.
11.	R11	Communication by R2 to P.W.1 dated 08.04.2012.
12.	R12	Complaint to District Registrar dated 18.06.2012.
13.	R13	Notice by R2 to DC dated 18.07.2012.
14.	R14	Notice by R2 to CTO dated 02.08.2012.
15.	R15	Letter from CTO to R2 dated 12.09.2012.
16.	R16	Letter from R2 to CTO dated 06.11.2012.
17.	R17	Notice from CTO To R1 dated 06.11.2012.
18.	R18	Notice from CTO to R1 dated 26.11.2012.
19.	R19	Notice from District Registrar to P.W.1 dated 04.01.2014.
20.	R20	Transfer of Explosives License dated 04.01.2014.
21.	R21	Explosives License dated 26.08.2010.
22.	R22	Partnership Deed dated 10.01.2012.



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<i>Sl.Nos.</i>	<i>Exhibits</i>	<i>Description</i>
23.	R23	Letter from District Registrar to R2 dated 07.02.2012.

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P.B.BALAJI, J.,
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