



Arb.O.P.(Comm.Div.) No.146 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
28.08.2024

PRONOUNCED ON
03.10.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU
Arb.O.P.(Comm.Div.) No.146 of 2024

1.R.Vadivel
2.R.Rajkumar

... Petitioners

-VS-

1.Ramesh Vasudevan
2.Raveendra Nath Karnati

... Respondents

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

(A) Appoint an Arbitrator to Arbitrate all the claims and disputes between the petitioners and the respondents arising out of the partnership agreement dated 14.03.2018

(B) Direct the respondents to pay the cost of this petition and

(C) Such other orders or relief

For Petitioners : Mr.P.Venkatraman

For Respondents : Mr.V.Sabari Kumar
(Vakalath returned)

ORDER

This Arbitration Original Petition has been filed under Section 11(6)

<https://www.mhc.tn.gov.in/judis>



of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act') to appoint an Arbitrator to adjudicate upon disputes/differences between the Petitioners and the Respondents and direct the Respondent to pay the costs of this proceeding.

2. The learned counsel for the petitioner would submit that the petitioners and the respondents had entered into a Partnership Deed on 14.03.2018 fixing the rights and liabilities of the respective parties. The said Partnership Deed also contains a Clause for arbitration. The first respondent with an intention to grab the business, lodged a false complaint before the Mahalingapuram Police Station alleging misappropriation of the firm's fund. Upon the complaint the petitioners were directed to appear before the police authorities and on production of the accounts and scrutinisation of the accounts by an auditor of the first respondent's choice as directed by the police officials, it was found that there was no misappropriation of funds and the complaint was closed. However, thereafter, again the petitioners were summoned for enquiry without any basis and the police authorities had directed the petitioners to close the partnership business. Hence, the notice invoking the arbitration under Section 21 was issued and the same had been returned with an endorsement "*refused*". Thereafter, again the police authorities coerced the petitioners to settle the dispute between the parties



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forcing the petitioner to serve a fresh arbitration notice on 21.09.2023 and also to dissolve the partnership firm. Since, the respondents had not turned up for settlement, the partnership firm was dissolved and the learned Arbitrator proceeded to issue notice. However, by a reply dated 03.11.2023 to the legal notice issued by the petitioners, the respondent had made untenable allegations and had objected to the notice dated 21.09.2023 and had called upon the petitioners to furnish the tangeable statement of accounts with all relevant documents, receipts, vouchers, etc., pertaining to the Partnership Deed and also to settle out standing profits of the respondents and the rental arrears of the tenanted premises which belong to the respondent where the partnership business was carried on. Therefore, he would submit that since, the notice dated 21.09.2023 referring the matter to arbitration had not been substantially addressed by the respondents, the petitioners had approached this Court to appoint an Arbitrator.

3. Countering his arguments, the learned counsel appearing on behalf of the respondents would contend that serious frauds had been committed by the petitioners and they had misappropriated the funds of the partnership business and have swindled huge monies belonging to the partnership firm. He would submit that pursuant to the dispute between the parties, the partnership business had been closed in the month of April 2023 and after



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due deliberations, the premises was opened by the petitioners and the first respondent noted down the existence of the equipments and the status of the interiors and found that the equipments and the interiors have lost their potential value. He would further submit that the legal notice dated 21.09.2023, even though, was not received by the respondents and had been received by the mother of the second respondent, while he was in foreign country, the same had been suitably replied on 03.11.2023. Therefore, there is no proper service of notice of invocation of Section 21 of the Arbitration and Conciliation Act,1996. He would further submit that the petitioners are liable to pay the lease rentals for the shop premises and the same has also been not paid by the petitioners. Therefore, he would submit that there is clear breach of trust which cannot be Arbitrated by the Arbitrator, if any to be appointed by this Court. Therefore, he would pray this Court to dismiss the O.P.

4. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

5. It is not disputed that the Partnership Deed contains a Clause for Arbitration to arbitrate the dispute between the parties.

<https://www.mhc.tn.gov.in/judicial> The objections raised by the respondents are two fold.



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Arb.O.P.(Comm.Div.) No.146 of 2023

(a) Notice dated 21.09.2024 had not been received by them and the petitioners have failed to produce proof of service of such notice.

(b) That fraud had been committed by the petitioners wherein, funds of the partnership have been misappropriated and swindled by the respondent for which a complaint had also been given to the concerned Police.

6. As regards to the first objection, eventhough the petitioners have not produced a copy of the acknowledgement evidencing the receipt of the notice dated 21.09.2023, it could be seen that the same had been replied to through a counsel jointly by both the respondents. A reading of the notice does not disclose of their intention to object for appointment of Arbitrator, but had proceed to make allegations of fraud and had also called upon the petitioners to produce the statement of accounts or assets of the partnership firm. Having replied to the notice dated 21.09.2023, the respondents cannot be heard to contend that the notice dated 21.09.2023 had not been received by them. The notice dated 21.09.2023 clearly indicates that the petitioners have not only decided to dissolve the firm but also to refer the dispute to the sole Arbitrator named by them and had called upon the respondents to accept the nomination made by them. Their reply does not respond to the averments contained



in the notice dated 21.09.2023 with regard to appointment of Arbitrator. Therefore, I am of the view that there is a valid notice under Section 21 of the Arbitration and Conciliation Act, 1996.

7. As regards to the allegation of fraud, it is to be noted that a complaint had been lodged originally by the respondents against the petitioners. It has been contented by the petitioners that the said complaint was as early as in the month of March 2023 and the complaint had been alleged to have been closed by the police after verification of the accounts submitted by the petitioners at the instances of the Auditor appointed by the first respondent. The respondents have not placed before this Court any material of any further proceedings pursuant to the closure of the police complaint or they have not disputed the closure of the said police complaint. It had been held by the Hon'ble Apex Court in the *case of A.Ayyasamy Vs. A.Paramasivam reported in 2016 (10) SCC 386*, mere allegation of fraud cannot be a ground to refuse to refer the matter for Arbitration.

8. In a further judgment, the Hon'ble Apex Court has also held that the concept of fraud to refuse the party to arbitration



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was an archaic view and therefore, the allegation of fraud alone cannot be a ground to refuse the parties to be referred for Arbitration. In the present case, as already stated, the allegation of fraud was enquired into by the police and closed. No further proceedings had been taken by the respondents against the said closure. That apart, the respondents themselves in reply to the notice dated 21.09.2023 called upon the petitioners to produce the accounts of the firm which itself would substantiate that there is a dispute between the parties with regard to the accounts of the firm. Hence, I am inclined to appoint a sole Arbitrator for resolving the dispute that had been arisen between the parties out of the partnership agreement dated 14.03.2018.

9. In such view of the matter, this Court appoints **Mr.S.Baskaran, Former District Judge, residing at No.A1/T, SAF Games Village, Koyambedu, Chennai- 600 107, Mobile No.9443569226**, as Sole Arbitrator to enter upon the dispute between the petitioner and the respondent.

10. 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,



Arb.O.P.(Comm.Div.) No.146 of 2024

however, not later than six (6) months from the date of his entering into
reference.

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11. Accordingly, this Arbitration Original Petition is ordered.

03.10.2024

Index :Yes/No

Speaking Order/Non Speaking Order

Gba

K.KUMARESH BABU, J.

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Arb.O.P.(Comm.Div.) No.146 of 2024

Arb.O.P. (Com.Div.) No.146 of 2024

03.10.2024