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C.M.A.No.1317 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

C.M.A.No.1317 of 2024

1. Mr.N.Ravichandran
S/o.Nagappan
2. Mr.G.Padmanaban
S/o.Guruvannan
3. Mr.C.B.Sivakumar
S/o.C.K.Bharath Raj
4. M/s.Concolor Interiors
D/No.119, Kovai Thirunagar
Nehru Nagar, Kalapatti Road
Aerodrome Post
Coimbatore - 641 014.

... Appellants

Vs.

Mr.R.Rajasekar
S/o.Ramadhayan

.. Respondent



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Civil Miscellaneous Appeal filed under Section 37 of Arbitration and Conciliation Act, 1996, praying to set aside the ex parte interim order dated 14.02.2024 in Section 9 of the Arbitration and Conciliation Act, 1996 passed by Hon'ble Commercial Court Judge [District Judge Cadre] Coimbatore in Arbitration Application No.167 of 2023.

For Appellants : Mr.L.Sivanandan
For Respondent : Mr.SVenugopal Raj

J U D G M E N T

[Judgment of the Court was made by M.SUNDAR, J.,]

Captioned 'Civil Miscellaneous Appeal' {hereinafter 'CMA' for the sake of brevity, convenience and clarity} is directed against an order dated 14.02.2024 made in Arb.Application No.167 of 2023 (CNR No.TNCB22-000627-2023) on the file of the Commercial Court (District Judge Cadre) Coimbatore. This '14.02.2024 order' shall hereinafter be referred to as 'impugned order' and 'Commercial Court (District Judge Cadre) Coimbatore' shall hereinafter be referred to as 'said Commercial Court' both for the sake of convenience and clarity.



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2. To be noted, impugned order has been made by said Commercial Court in an application filed under Section 9 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity]. Arbitration Agreement between the parties i.e., Arbitration Agreement between the parties within the meaning of Section 2(1)(b) read with Section 7 of A and C Act is in the form of a clause (clause 25) in a Partnership Deed dated 22.11.2019. Relevant clause is captioned 'Arbitration' and the same reads as follows:

'ARBITRATION

25. If during the continuance of the partnership or any time afterwards any dispute or difference or question shall arise between the said partners or any of their representatives regarding the partnership accounts or transactions thereof for the dissolution's, winding up thereof, the construction, meaning or right and liabilities of the partnerships or their representatives under this deed, then every such dispute, difference or question shall be referred to arbitration under the Indian Arbitration Act, 1940 or any statutory modifications thereof for the time being in force and its award shall be binding on the partners and / or their representatives.'



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3. A perusal of primary deed i.e., Partnership Deed dated 22.11.2019 brings to light that there are four individuals (partners) and compendious name qua the partnership firm is 'M/s.Concolor Interiors' {hereinafter 'said firm' for the sake of brevity, convenience and clarity}.

4. One of partners namely, Mr.R.Rajasekar (party of fourth part in partnership deed) triggered the arbitration clause *inter alia* saying that there was an agreement to raise his share to 82%, a Codicil to this effect dated 02.01.2023 was entered into but the same has not been implemented.

5. Be that as it may, this Thiru.R.Rajasekar issued a trigger notice through counsel being notice dated 02.12.2023 to the other three partners raising this issue and calling upon three partners to express their willingness qua appointment of former District Judge as a sole Arbitrator. There is no dispute or disagreement before us that this trigger notice was received by appellant No.2 (Mr.G.Padmanaban) on 06.12.2023. The exact date on which the other two appellants namely, Mr.N.Ravichandran and Mr.C.B.Sivakumar received the trigger notice is not readily available with



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learned counsel for respondent but learned counsel for petitioner very fairly submits that they have also received the trigger notices. Therefore, arbitral proceedings have commenced within the meaning of Section 21 of A and C Act. Be that as it may, aforementioned Section 9 application in said Commercial Court has been filed by R.Rajasekar on the same day as that of trigger notice i.e., 02.12.2023 notice. To be noted, three other partners have been arrayed as R1 to R3 and said firm itself has been arrayed as R4. The said firm is not a juristic person and it is only a compendious name but in the light of the narrative thus far and the trajectory the matter has taken before us, we refrain from expressing any view or opinion on these aspects of the matter. Suffice to say that respondents, who received notices in aforementioned Section 9 application could not go before said Commercial Court and an *ex parte* order allowing Section 9 application wherein interim injunction restraining respondents from carrying on activities of said firm was made i.e., impugned order. Assailing the impugned order, captioned CMA has been preferred.

6. Mr.L.Sivanandan, learned counsel on record for appellants



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submitted that interim order is causing hardship to the appellants.

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7. Issue notice.

8. Mr.S.Venugopal Raj, learned counsel who has lodged caveat, accepted notice for sole respondent (R.Rajasekar).

9. Learned counsel submitted that aforementioned Codicil dated 02.01.2023 is of significance but that has not been mentioned in the appeal.

10. Be that as it may, both learned counsel fairly agreed in the light of the arbitral proceedings now having commenced i.e., commenced within the meaning of Section 21 of A and C Act, all the disputes between the four partners qua said firm are now to be adjudicated upon by a sole arbitrator. Both learned counsel, on instructions from respective litigants very fairly submitted that a sole Arbitrator can be appointed by this Court. We place on record our appreciation for this fair approach and record this consent / submission.

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11. Before we appoint a sole Arbitrator, we make it clear that as regards Section 9 application, the same should go before 'Hon'ble Arbitrator' [AT for the sake of brevity] as Section 17 application and appellants will be given an opportunity to contest the same on merits though they have set *ex parte* in the said Commercial Court. However, we make it clear that the order of said Commercial Court i.e., impugned order will continue to operate till AT takes a decision on Section 17 application. This means that sole respondent before us will place this Section 9 application before AT as Section 17 application and appellants before us will file a counter affidavit. We request sole Arbitrator (to be noted, appointment will be *infra* in following paragraphs elsewhere in this order) to consider the submissions on both sides and take a decision on the interim prayer notwithstanding the impugned order being a judicial order and we make it clear that the order to be made by Hon'ble AT in the Section 17 legal drill will replace the impugned order. We also request Hon'ble sole arbitrator to adjudicate upon disputes arising out of aforementioned Partnership Deed dated 22.11.2019 qua Codicil dated 02.01.2023 and render an award in accordance with A and C Act.



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12. We make the following order

(i) Hon'ble Dr.Justice P.Devadass, former Judge, Madras High Court, residing at No.23, Garden Street, VGN Monte Carlo, Dr.Gurusamy Road, Nolambur, Chennai-600 095, Mobile No.9444487799, is appointed as a sole Arbitrator;

(ii) Aforementioned Section 9 application moved by Mr.R.Rajasekar (respondent in captioned matter) will be placed before AT as Section 17 application;

(iii) Appellants before us, who will be respondents in Section 17 application will have an opportunity to file counter affidavit and contest the same;

(iv) Hon'ble AT is requested to decide Section 17 application notwithstanding impugned order being a judicial order as expeditiously as the other business of Hon'ble AT



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would permit (order to be made by AT in Section 17 application will replace the impugned order);

(v) Hon'ble AT is requested to embark upon adjudication qua the other arbitrable disputes that have arisen between the parties which shall be placed before AT by way of pleadings, claim petition, statement of defence etc., adjudicate upon the same and render an award in accordance with A and C Act;

(vi) Hon'ble sole Arbitrator now appointed shall conduct arbitration in accordance with 'Madras High Court Arbitration Proceedings Rules, 2017' and Hon'ble Arbitrator's fee shall be as per 'Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017';

(vii) It is open to Hon'ble AT to conduct arbitration through videoconferencing.



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WEB COPY Captioned CMA is disposed of in the aforesaid manner by the
aforementioned consent order. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

20.06.2024

Index : Yes / No

Speaking

Neutral Citation : Yes

mk

Note: Registry is directed to communicate a copy of this order forthwith to

Hon'ble Dr.Justice P.Devadass,
former Judge, Madras High Court,
No.23, Garden Street,
VGN Monte Carlo,
Dr.Gurusamy Road, Nolambur,
Chennai-600 095,
Mobile No.9444487799.

To

1. The Commercial Court Judge
{District Judge Cadre}
Coimbatore.
2. The Section Officer
V.R.Section
High Court, Madras.

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