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Arb.O.P (Com.Div.) No.177 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.177 of 2023

Mr.B.Suresh Kumar

... Petitioner

Vs.

Mr.M.Ramamoorthi

...Respondent

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to decide the disputes which have arisen between the Petitioner and the Respondent.

For Petitioner : Mr.Athiban Vijay

For Respondent : Mr.Hari Radhakrishnan

ORDER

This petition has been filed to appoint a sole Arbitrator to adjudicate the disputes between the Petitioner and the Respondent.



WEB COURT

2. The learned counsel for the Petitioner would submit that the Petitioner and the Respondent had entered into a Partnership Deed dated 03.02.2010 to carry on the business of website designing, flash, web design themes, graphic design and *inter alia* sell the same online, and to provide any other website-related service, under the name and style of "I AM DESIGNING". As per Clause 6 of the Partnership Deed, both the petitioner and the Respondent are working partners. As per Clause 7 of the partnership deed, both the working partners are entitled to commission at the end of each year. However, thereafter, a Supplement Deed was executed on 01.04.2016, substituting Clause 6 to the effect that the respondent alone is the working partner. Further, by way of Supplement deed, Clause 7 of the partnership deed which prescribed payment of commission was deleted. Since the Respondent who was the sole working partner as per the supplement deed, has not properly carried on his duties and caused loss to the Firm, the Petitioner sought explanation from the Respondent, on several times, with regard to the loss incurred for which, the Respondent has not given proper reply. Hence, a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (hereinafter called as "the Act") was sent to the



Respondent on 19.01.2024, for which the Respondent sent a reply dated 21.02.2024, not agreeing for appointment of an arbitrator. Hence, left with no other alternative, the present petition came to be filed.

3. Further, the learned counsel for the Petitioner would submit that the present dispute is arising out of the Partnership Deed dated 03.02.2010 and the same is arbitrable in terms of Clause 21 of the said agreement, which reads as follows:

“Clause 21- In case of dispute, parties hereto agree to settle the same by arbitration and the decisions of the arbitrator shall be binding on the parties hereto.”

By referring to the said clause, he would submit that the present dispute may be referred to Arbitration.

4. Per contra, Mr.Hari Radhakrishnan, learned counsel had entered appearance on behalf of the Respondent and would submit that the Respondent was a working partner in the Firm and as on date, since the Respondent is not carrying on any business, the partnership firm has



become defunct. He further submitted that since the dispute is with regard to damages, an arbitrator can be appointed.

5. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

6. In view of the above, it is clear that the present dispute is one arising out of the partnership deed dated 03.02.2010 and the same is arbitrable under Clause 21 of the said deed. Hence, this Court is inclined to appoint a sole Arbitrator.

7. Accordingly, this Court feels it appropriate to pass the following order:

i) Mr. R.Vidhya Shankar, Advocate having office at No.5/9, First Floor, Alwarpet, Chennai- 600 018, Mobile No:9952211995, is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period



of six months from the date of receipt of the Order. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent and vice versa.

8. With the above directions, this Arbitration Original Petition is allowed.

20.06.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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