



O.P.No.1068 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.12.2023
Pronounced on	05.06.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

O.P.No.1068 of 2019

and

A.No.9777 of 2019

N.Syamala Devi

... Petitioner

Vs.

1.Dr.Geetha Hari Priya @ Geetha Gopalaswamy

2.E.Raghava Rao

3.G.Kamala

4.S.Raghuvaran

... Respondents

Prayer: Original Petition is filed under Section 34(2)(a)(iv); 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996, praying to set aside the Award dated 18.03.2019.

For Petitioner

: Mr.V.Prakash
Senior Counsel
for Mr.R.N.Amarnath and
Mr.A.Maheshnath

For Respondents

: Mr.M.K.Kabir
Senior Counsel
for Mrs.M.K.Padma and
Mr.Anand Sasidharan



O.P.No.1068 of 2019

ORDER

This Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996. The petitioner is aggrieved by the the Impugned Award dated 18.03.2019 passed by the Sole Arbitrator appointed by this Court vide its Order dated 23.01.2015 in O.P.No.15 of 2011 under Section 11 of the Arbitration and Conciliation Act, 1996. The impugned Award was passed by the learned Arbitrator in respect of the disputes between the parties hereto under Ex.R-51 Unregistered Partnership Deed dated 10.05.1993.

2. Clause 23 of Ex.R-51 Unregistered Partnership Deed dated 10.05.1993 deals with a mechanism for resolution of dispute through arbitration. It reads as under:-

“23. Any difference which may arise between the partners regarding the interpretation of these presents or regarding the rights and liabilities of either partner arising hereunder of any other matter or thing concerning the firm of the affairs thereof shall be referred to the arbitration and award of two Arbitrators to be nominated one each by the two parties to the dispute who shall nominate an umpire, before entering upon the reference, and in case of any difference of opinion between them the matter shall be referred to the umpire under the provisions of the Indian Arbitration Act, 1940.”

3. The Arbitral proceeding was initiated by the respondents 1 to 3 (claimants) before the Arbitral Tribunal pursuant to Ex.R-99 Order dated 28.08.2009 in A.No. 2103 of 2008 in C.S.No.555 of 2006.



4. Ex.R-99 Order dated 28.08.2009 in A.No. 2103 of 2008 in C.S.No.555 of 2006 was followed by Ex.C-28/Ex.R-101 Notice dated 18.11.2009 by the respondents 1 to 3 (claimants) to the petitioner under Section 21 of the Arbitration and Conciliation Act, 1996 for dissolution of the partnership between the parties hereto.

5. The petitioner was the 1st respondent before the Arbitral Tribunal while the 4th respondent herein was the 2nd respondent in the aforesaid Arbitral Proceeding. The 4th respondent and the 2nd respondent sailed along with the respondents 1 to 3 (claimants) both before this Court and the earlier before the Arbitral Tribunal and in the various proceedings which were in the background.

6. The Arbitral Tribunal had framed the following issues:-

- i. *Whether the property situate at Plot No.100-A, Q Block, M.M.D.A Colony, Arumbakkam, Chennai 600 106 is the property belonging to the Partnership firm M/s.Maruthi & Co.?*
- ii. *Whether the land allotted in the year 1984 belonged to the 1st respondent or to the partnership firm?*
- iii. *Whether the School situate at Plot No.100-A, Q Block, M.M.D.A Colony, Arumbakkam, Chennai 600 106 belongs to the partnership firm or not?*



WEB COPY



O.P.No.1068 of 2019

- iv. *Whether the Partnership deed was given effect to and acted upon?*
- v. *Whether the Partnership deed entered into on 10.05.1993 was superseded by the Trust Deed dated 25.04.1996?*
- vi. *Whether the Partnership firm M/s.Maruthi & Co., is liable to be dissolved?*
- vii. *Whether the Arbitration proceeding is maintainable in as much as the Partnership firm is an unregistered one?*
- viii. *Whether the accounts of the Partnership business from 10.05.1993 till date of actual dissolution is liable to be rendered?*
- ix. *Whether the claimants are entitled to payment upon dissolution of the Partnership firm in terms of the Partnership Deed dated 10.05.1993?*
- x. *Whether the claimants are entitled to a permanent injunction restraining the 1st respondent from retaining from retaining, receiving , disposing off or otherwise dealing with the Schedule mentioned property and effects of the Partnership?*
- xi. *Whether the claimants are entitled to costs?*
- xii. *To What reliefs are the parties entitled?*

7. By an Order dated 28.02.2017, the learned Arbitrator framed the following additional draft issues:-

- i. *Whether the arbitration proceedings are maintainable and not barred by limitation in view of the notice dated 13.11.2004?*



ii. *Whether the arbitration proceedings are maintainable for the grounds raised in the rejoinder statement filed by the 1st Respondent?*

8. By the Impugned Award, the claim petition filed by the respondents 1 to 3 (claimants) were answered in their favour. Operative portion of the Impugned Award reads as under:-

51. As far as issues are concerned, they are answered as under:

Issue No.1:- *I hold that the subject property belong to the partnership firm M/s. Maruthi & Co.*

Issue No.2:- *Though the land was allotted to the 1st Respondent in the year 1994 the land as well as the School building which is a subject property belongs to the partnership firm.*

Issue No.3: *The School situate at Plot No. 100-A, Q Block, M.M.D.A Colony, Arumbakkam Chennai 600 106 belongs to the partnership firm.*

Issue No.4: *The partnership was given effect to and acted upon.*

Issue No.5: *The partnership deed is not superseded by Trust deed dt. 25.4.1996.*

Issue No.6:- *The partnership firm is liable to be dissolved and dissolved.*

Issue No.7:- *The Arbitration Proceedings are maintainable.*

Issue No.8:- *The accounts of the partnership from 10.5.1993*



till the date of actual dissolution is not liable to be rendered.

Issue Nos.9 & 10: *They will be subject to the award that is passed.*

Additional Issues:-

1) The arbitration proceedings are maintainable and not barred by limitation.

2) Additional issue no. 2:- Arbitration Proceedings are maintainable.

As far as reliefs are concerned, the Claimants have claimed in para 19 of the statement of claim. As far as 1st relief is concerned, I hold that the property situated at Plot No.100-A, Q Block, M.M.D.A Colony, Arumbakkam, Chennai 600 106 is a partnership property of the firm Maruthi & Co.

As far as 2nd relief is concerned, the partnership dt. 10.5.1993 shall stand dissolved from the date of claim petition 15.7.2015. Though the partnership stand dissolved, since the property has been allotted for educational purposes and being a School, there cannot be any division of property by meets and bounds between the erstwhile partners. I hold that the subject property cannot be divided but no party can claim exclusive right that it should be allotted to him or her.

- i. In view of dissolution of the firm and also taking into account that the 1st Respondent is the correspondent of the School, she is given the Istopption to purchase the shares of the Claimants as well as the 2nd Respondent at the price that may be offered by the Claimants and the 2nd Respondent. This exercise shall be done in the presence of any independent person who may be chosen by them. If the 1st Respondent is willing to pay the amount that may be quoted by the Claimants and the 2nd Respondent, subject to such negotiation as the case*



WEB COPY



O.P.No.1068 of 2019

- may be, the Claimants and 2nd Respondent are directed to release their share in the subject property in favour of the 1st Respondent for consideration. This exercise shall be done within a period of one month from the date of the award.*
- ii. If the 1st Respondent is not willing to purchase the shares of the Claimants and the 2nd Respondent, at the price offered by the Claimants and 2nd Respondent, the Claimants and 2nd Respondent are given the option to purchase the share of the 1st Respondent at the price offered by the 1st Respondent, subject to such negotiation as the case may be, and if the Claimants and the 2nd Respondent are willing to pay the amount offered by the 1st Respondent, the 1st Respondent is directed to release her interest in the subject property in favour of the Claimants and the 2nd Respondent. This exercise also should be done within a period of 15 days thereafter in the presence of the independent person.*
- iii. If the parties to the arbitration proceedings are not willing to purchase the share of the other parties, the property shall be sold in public auction to the 3rd party at the price quoted by the highest bidder in the open auction with the right to improve the bid amount quoted by them. The independent person shall also be present at the time of consideration of the offer by the highest bidder and acceptance thereof.*
- iv. An another opportunity is also given to the parties herein to purchase the shares of the other contesting party at the price quoted by the 3rd party bidder if anyone of the parties is willing to purchase the subject property at the price quoted by 3rd party bidder and if anyone of the parties is not*



WEB COPY



O.P.No.1068 of 2019

willing to purchase the subject property, the subject property shall be sold to a 3rd party for purpose of running the School and the sale proceeds shall be distributed among the parties to the arbitration proceedings in the same ratio as found in the deed of partnership dt. 10.5.1993.

- v. As far as 3rd relief is concerned, I am not inclined to grant relief.*
- vi. As far as 4th and fifth reliefs are concerned the manner in which assets shall be realised is indicated above and it is not necessary for appointment of independent receiver. Until that is done the status- quo of the property shall be maintained.*

52. There is no order costs in view of close relationship between parties.

Award is accordingly passed.

9. The dispute in the Arbitral Proceeding pertains to a land measuring an extent of 7 grounds and 800 sq.ft., allotted to the petitioner herein by the Tamil Nadu Housing Board (TNHB) in the year 1984 vide Ex.R-46 Allotment Letter dated 18.10.1984. On the aforesaid land, M/s.Maruthi Vidyalaya School was in existence since 16.06.1988. It was reportedly closed by the Directorate of School Education on 19.11.2010.

10. The admitted case of the petitioner is that Dr.G.Gopalswamy (the husband of the 1st respondent/claimant), his brother Dr.G.Srinivasan, (the father



of the 4th/2nd respondent) had lent a sum of **Rs.50,000/-** to the petitioner and her husband to pay an initial sum of **Rs.66,476.25/-** to the Tamil Nadu Housing Board (TNHB) after the aforesaid land was allotted to the petitioner vide Ex.R-46 Allotment Order dated 18.10.1984 of the Tamil Nadu Housing Board (TNHB). **Rs.66,476.25/-** was 1/4th of the cost of the land required to be paid as per the aforesaid Allotment Letter.

11. It is the further case of the petitioner that the balance amount was paid to the Tamil Nadu Housing Board (TNHB) over a period of 10 years (120 months) at the rate of **Rs.2,837/-** p.m., inclusive of interest at 12% p.a., by the petitioner and her husband Mr.N.Raghavulu Naidu from and out of the revenue generated from the School viz., M/s.Maruthi Vidyalaya started on 16.06.1988.

12. The admitted position of the fact is that Dr.G.Gopalswamy (the husband of the 1st respondent/claimant), the 3rd respondent/claimant and the Dr.G.Srinivasan (the father of the 2nd and the 4th respondent) are siblings. The 3rd respondent/claimant is also the sister of Dr.G.Gopalswamy (the husband of the 1st respondent/claimant).



O.P.No.1068 of 2019

13. It is the case of the petitioner that though the aforesaid amount of **Rs.50,000/-** was lent by Dr.G.Gopalswamy and Dr.G.Srinivasan in 1984, receipts were obtained later from the petitioner herein as if amounts were lent by the respondents/claimants herein for the following amounts:-

Sl.No.	Respondents/ Claimants	Name	Amount In Rs.
1	R1/C1	Dr.Geetha Haripriya	11,500.00
2	R2/C2	Dr.E.Raghava Naidu	8,500.00
3	R3/C3	G.Kamala	20,000.00
4	R4/R2	Dr.G.Srinivasan for his son, Raghuvaram	10,000.00
		Total	50,000.00

14. It is the case of the petitioner that the aforesaid amount of **Rs.50,000/-** was lent as a gesture of goodwill but later receipts were obtained from the petitioner as both Dr.G.Gopalswamy and Dr.G.Srinivasan who lent the aforesaid amount of **Rs.50,000/-** were Government Servants.

15. It is further case of the petitioner that the petitioner's husband Mr.N.Ragahvalu Naidu who later became the Principal of the School was a friend of Late Mr.C.Chandrayya, a former Deputy Secretary to the Government of Tamil Nadu from 1973 until his death in the year 1980. Late



Mr.C.Chandrayya, is the father of 1st respondent/claimant.

WEB COPY

16. It appears he was an influential person who had fostered a friendship between Dr.G.Gopalswamy, Mr.N.Ragahvalu Naidu, the husband of the petitioner, Dr.G.Srinivasan, the father of the 4th respondent herein and Mr.Ragahva Rao, the 2nd respondent herein.

17. It is further case of the petitioner that Dr.G.Gopalswamy (the husband of 1st respondent/claimant) and the 2nd respondent/claimant were classmates and thus became a common friend and acquaintance of the petitioner and her husband Mr.N.Raghavulu Naidu.

18. It is further case of the petitioner that the 2nd respondent/claimant joined the services in the aforesaid School viz., M/s.Maruthi Vidyalaya, as a cashier and was paid a salary and assisted the School in maintenance of the record and was not a partner in the venture.

19. It is however admitted by the petitioner that later Ex.R-51 Unregistered Partnership Deed was signed on 10.05.1993 between the parties



O.P.No.1068 of 2019

hereto as its partners for running the aforesaid School. The name of the 4th respondent herein was included in the partnership, was admitted as a minor represented by his father Dr.G.Srinivasan.

20. However, it is the specific case of the petitioner that the said partnership in Ex.R-51 Unregistered Partnership Deed dated 10.05.1993 was neither registered nor acted upon either after the School was started on 16.06.1988 or thereafter.

21. It is the further case of the petitioner that the 2nd respondent/claimant was drawing salary from the School and that after payment of the balance amount to the Tamil Nadu Housing Board (TNHB) from and out of the revenue generated from the school, Ex.R-56 Sale Deed dated 15.07.1994 was executed in favour of the petitioner by the Tamil Nadu Housing Board (TNHB).

22. It is further case of the petitioner that after the Sale Deed was presented for registration, it was not released by the Sub-Registrar Office, as Office of the Sub-Registrar, felt that the value of the land declared in Ex.R-56 Sale Deed dated 15.07.1994 was under-valued and a sum of **Rs.6,73,904/-** was demanded towards deficit stamp duty on the value prevailing on the date of the



aforesaid Sale Deed.

WEB COPY

23. It is submitted that only after Ex.R-56 Sale Deed was released on 21.07.2004 by Sub-Registrar after reducing the stamp duty to **Rs.24,004/-** from **Rs.6,73,904/-**, the 3rd respondent/Claimant demanded for accounts under the Ex.R-51 Unregistered Partnership Deed dated 10.05.1993 vide Ex.R-6 Letter dated 13.11.2004. It is submitted that the 3rd respondent/Claimant was in no way involved in the management of the School under Ex.R-51 Partnership Deed dated 10.05.1993. It is submitted that Ex.R-6 Letter dated 13.11.2004 was issued on behalf of Dr.Gopalaswamy and Dr.G.Srinivasan using the facade of Ex.R-51 Partnership Deed dated 10.05.1993, when indeed the partnership was a non-starter from the beginning.

24. It is further case of the petitioner that a property in Ayanambakkam of the petitioner's late husband Mr.N.Raghavulu Naidu was initially proposed to be sold in the year 1984.

25. However, Dr.Gopalaswamy (the husband of 1st respondent/claimant) and Dr.G.Srinivasan (the father of the 4th and the 2nd respondent) prevailed upon



the petitioner's late husband Mr.N.Raghavulu Naidu to not to sell the land and instead offered to help out the petitioner and her husband by advancing the aforesaid sum of **Rs.50,000/-** as a gesture of goodwill owing to the friendship between the petitioner's husband Mr.N.Raghavulu Naidu and Late Mr.C.Chandraya, the father in law of Dr.Gopalaswamy/the father of the 1st Respondent/Claimant, the aforesaid amount was lent.

26. It is further case of the petitioner that the loan given by Dr.Gopalaswamy and Dr.G.Srinivasan to the petitioner and her husband was later squared up from the sale proceeds of the said property in favour of Mrs.Revathy, one of the sister of Dr.Gopalaswamy (the husband of 1st respondent/Claimant) and Dr.G.Srinivasan (the father of the 4th and the 2nd respondent).

27. It is further submitted that the said Sale Deed for a sum of Rs.1,05,000/- was also witnessed by her husband Dr.Rajaram, which was registered as Doc.No.4037/1995. It is further submitted that Dr.Rajaram, is the other brother of Dr.Gopalaswamy (the husband of the 1st respondent/claimant) and Dr.G.Srinivasan (the father of the 4th and the 2nd respondent).



WEB COP 28. It is submitted that there was no other liability to any of the respondents either in person or under the so called partnership under Ex.R-51 Partnership Deed dated 10.05.1993. The petitioner however admits that initially the School was started on 16.06.1988 with a thatched roof and later a pucca building with a ground floor was built in the year 1994 after availing loan from private parties which was also paid from and out of revenue generated from the School and that the 1st floor was built in the year 2002-2003 after borrowing amounts from third parties which was also paid from and out of revenue generated from the School.

29. The petitioner admits that though Unregistered Partnership Deed was drawn on 10.05.1993 vide Ex.R-51 between the parties before the Court, it was never acted upon either by the petitioner or by the respondents herein.

30. On the other hand, it is the case of the respondents/claimants that pursuant to the contributions made by them and by Dr.G.Srinivasan for and on behalf of the 4th/2nd respondent, an unregistered Partnership Deed was drawn on 10.05.1993 between the parties hereto capturing the contribution of the parties



O.P.No.1068 of 2019

as below:-

P1	R1	R2	R3	R4	Total
Rs.89,460/-	Rs.89,460/-	Rs.89,460/-	Rs.44,730/-	Rs.44,730/-	Rs.3,57,840/-

31. The petitioner submits that Ex.R-65 Trust Deed dated 25.04.1996 was authored by the petitioner and registered as Doc.No.32/1996 before the Office of the District Registrar of Madras, Teynampet in which, the following persons were the other Trustees namely:-

i) N.R.Hemalatha, Shree daughter of the petitioner herein.

ii) E.V.K.Prasad, son of 2nd Respondent/Claimant

iii) Jamuna Chandrayya, wife of late C.Chandrayya.

(Mother of 1st respondent/Claimant)

*iv) G.Kamala, D/o.Gopalsamy/ Sister of Dr.G.Gopalaswamy,
the 3rdrespondent/claimant*

32. It is also the case of the petitioner that neither of the claimants (respondents 1 to 3 herein) nor the 4th respondent herein had showed any interest in the Management of the School right from inception in 1988 and that only in the year 2004 when the stamp duty was reduced from **Rs.6,73,904/-** to **Rs.24,004/-** and the Sale Deed dated 15.07.1994 was registered and released by the Office of the Sub-Registrar, the 3rd respondent issued Ex.R-6 Legal Notice



O.P.No.1068 of 2019

dated 13.11.2004 with copy marked to other claimants.

WEB COPY

33. The 3rd respondent/claimant had issued Ex.R-6 Legal notice dated 13.11.2004 to all the parties herein including Srt.Revathy Rajaram W/o.Dr.K.Rajaram who is neither a partner under Ex.R-51 Partnership Deed dated 10.05.1993 nor a Trustee under Ex.R-65 Trust Deed dated 25.04.1996.

34. Ex.R-6 Legal Notice dated 13.11.2004 was issued under Section 21 of the Arbitration and Conciliation Act, 1996. In Ex.R-6 Legal Notice dated 13.11.2004, the 3rd respondent/claimant demanded appointment of an Arbitrator.

35. Ex.R-6 Legal Notice dated 13.11.2004 of the 3rd respondent/claimant was reiterated vide Ex.R-210 dated 13.12.2004 by Dr.Gopalswamy (husband of the 1st respondent/claimant) on behalf of the 1st respondent/claimant.

36. Similarly, Dr.S.Rajeshwari, the mother of the 4th/2nd respondent vide Ex.R-8 Letter dated 22.12.2004 also joined hands with 3rd respondent/claimant in Ex.R-6 Legal Notice dated 13.11.2004 and reiterated the stand of the 3rd



O.P.No.1068 of 2019

respondent/claimant dated 13.11.2004. Ex.R-6 Legal Notice dated 13.11.2004

was also replied on 04.01.2005 vide Ex.R-9.

37. Ex.R-6 Legal Notice dated 13.11.2004 was replied back by the petitioner in Ex.R-7 dated 24.11.2004. In Ex.R-7 dated 24.11.2004, the petitioner denied existence of any partnership between the parties and it was further stated the said partnership in any event stood superseded by Ex.R-65 Trust Deed dated 25.04.1996.

38. Thus, the arbitration proceeding if any, for resolution of dispute between the parties hereto commenced on 24.11.2004 with the issuance of Ex.R-7 dated 24.11.2004 of the petitioner to Ex.R-6 Legal Notice dated 13.11.2004 of the 3rd respondent/claimant in terms of Section 21 of the Arbitration and Conciliation Act, 1996.

39. It is the case of the petitioner that neither a partnership was in existence pursuant to Ex.R-51 Unregistered Partnership Deed dated 10.05.1993 which in any event stood superseded by Ex.R-65 Trust Deed dated 25.04.1996 in Doc.No.32/1996 [Maruthi Educational Trust] before the Office of the District Registrar of Madras, Teynampet.



WEB COPY

40. It is submitted that the institution of the arbitration proceedings for appointment of an Arbitrator in O.P.No.15 of 2011 during the month of February, 2011 pursuant to which, the learned Arbitrator was appointed vide order dated 23.01.2015 was hopelessly time barred and that the learned Arbitrator has passed on patently illegal Award by applying Section 14 of the Limitation Act, 1963 to the facts of the present case.

41. Later C.S.No.555 of 2006 was filed by the claimants (respondents 1 to 3 herein) against the petitioner, petitioner's husband and the 4th respondent herein for the following relief:-

- a) *Declaring that the property more particularly mentioned in the schedule hereunder is the property of the partnership firm, M/s.Maruthi& Co.;*
- b) *For a permanent injunction restraining the first and second defendants, their men, agents, servants or any person claiming through or under them from in any manner dealing with the property more particularly described in the schedule hereunder or alienating the same;*
- c) *For a permanent injunction restraining the first and second defendants, their men, agents, servants or any person claiming through or under them from in any manner disturbing the peaceful possession of the plaintiffs in the property;*
- d) *For costs of the suit;*



WEB COPY



O.P.No.1068 of 2019

- e) *For such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.*

42. In the said suit, the petitioner and her husband had filed A.No.2103 of 2003 under Order VII Rule 11 of C.P.C to reject the plaint on the ground that suit is barred in view of Sub-Section (1) to Section 69 of the Indian Partnership Act, 1932.

43. It is further submitted that C.S.No.407 of 2007 which was renumbered as O.S.No.6394 of 2010 was also filed by the petitioner against Mrs.Jamuna Chandrayya, Dr.Geetha Gopalaswamy (R1 herein), E.Raghava Rao (R2 herein), G.Kamala, (R3 herein) and E.V.K.Prasad for the following relief:-

- i. *For a declaration that the resolutions dated 08.04.2006 and 06.05.2006 passed by the defendants, calling it as a Trust meeting, purporting to interfere with the affairs of Maruthi Matriculation School run in the suit property is not valid and binding upon the plaintiffs;*
- ii. *For a permanent injunction, restraining the defendants, their agents, servants and men and everyone claiming under them and acting on their behalf, from, in any way, interfering with the rights and functions of the first plaintiff as respondent of Maruthi Matriculation School run in the suit property under the guise of the aforesaid resolutions dated 08.04.2006 and 06.05.2006*



WEB COPY



O.P.No.1068 of 2019

without following the due process of law;

- iii. For a permanent injunction, restraining the defendants, their agents, servants and men and everyone claiming under them and acting on their behalf from, in any way, interfering with the rights and functions of the second plaintiff as principal of Maruthi Matriculation School run in the Suit property under the guise of the aforesaid resolution dated 08.04.2006 and 06.05.2006 without following the due process of law;*
- iv. For permanent injunction, restraining the defendants, their agents, servants and men and everyone claiming under them and acting on their behalf from, in any way, interfering with the plaintiff's peaceful possession and enjoyment of the suit property under the guise of the aforesaid resolution dated 08.04.2006 and 06.05.2006 without following the due process of law;*
- v. directing the defendants to pay the cost of the suit; and*
- vi. great such other suitable relief or reliefs as this Hon'ble court deems fit and proper in the circumstances of the case.*

44. The Court vide Ex.R-99 Order dated 28.08.2009 allowed A.No.2103 of 2008 in C.S.No.555 of 2006 and rejected the plaint in C.S.No.555 of 2006 with the following observations:-

“17. As such the cases where right to get enforced arbitration clauses, cannot be equated to the cases for enforcement of property rights under the agreements of



WEB COPY



O.P.No.1068 of 2019

*unregistered partnerships. To the risk of repetition and pleonasm but without being tautologous, I would like to point out that what is prohibited under Section 69 (1) of the Indian Partnership Act, is only an embargo for the unregistered partnership firm as well as the partners, to approach the civil court **and not any other forum. Arbitration proceedings cannot be equated to that of civil court proceedings.** As such, I am of the firm opinion that this suit is nothing but a suit based on the contract, which emerged between the partners of the unregistered partnership and the suit is only for the purpose of enforcement of the right contemplated there in.”*

45. Thus, the plaint in C.S.No.555 of 2006 was rejected under Order VII Rule 11 of C.P.C. by this Court vide Ex.R-99 Order dated 28.08.2009 as not maintainable. However, facts reveal that even before the plaint in C.S.No.555 of 2006 was rejected vide Ex.R-99 Order dated on 28.08.2009, respondents 1 to 3 herein had filed O.P.No.15 of 2011 for appointment of an Arbitrator on 07.12.2007.

46. Obviously, it was a defective presentation and was numbered much later in 2011 as it is numbered as O.P.No.15 of 2011. It was perhaps a defective presentation made on 07.12.2007 as the subsequent details of passing of Ex.R-99 Order dated 28.08.2009 has been added to it when it was numbered in 2011. I shall refer to this aspect which was not noticed by the learned



O.P.No.1068 of 2019

Arbitrator while extending the benefit of Section 14 of the Limitation Act, 1963 in favour of the claimants (respondents herein).

47. The facts also reveal that the 1st respondent's mother Mrs.Jamuna Chandrayya has addressed several letters to the District Collector regarding the functioning of the School which was apparently closed on 19.11.2010 by the Director of School Education. There have been several writ petitions which were filed during the course of time.

48. W.P.No.27982 of 2010 and W.P.No.5033 of 2011 were filed by the respondents 1 to 3 along with Mrs.Jamuna Chandrayya, as Trustee of M/s.Maruthi Educational Trust represented by the Trustee. W.P.No.14519 of 2011 was filed by the petitioner in her capacity of the Correspondent of Rukmuni Matriculation School for the following reliefs :-

S.No.	W.P.	Relief	Date of disposal	Status
1	27982/2010	To issue a writ of Certiorarified Mandamus, calling for the records of the 1 st respondent in the impugned order /O/Mu.No.3980/A2/10 dated 09.09.2010 and quash the same and against		



WEB COPY



O.P.No.1068 of 2019

		the provisions of Tamil Nadu Recognized Private Schools (Regulation) Act read with Code of Regulations for Matriculations School, Tamil Nadu and consequently direct the 1 st respondent to grant the extension for recognition to Maruthi Educational Trust namely the 4th respondent for running the Maruthi Matriculation School at Plot No.Q 100A, MMDA Colony, Arumbakkam, Chennai 600 106.		
2	5033/2011	To issue a Certiorari Mandamus calling for the records pertaining to proceedings dated O.Mu.No.3980/B2/2010 dated 13.12.2010 and quash the same and direct the respondents to process petitioner's application dated 20.10.2010 for grant of opening permission for Rukumni Matriculation School in accordance with law	29.10.2018	Dismissed as Infructuous
3	14519/2011	To issue a writ of Certiorari calling for the records pertaining to proceedings Na.Ka.No.587/2011 dated 25.04.2011 on the file of the 2nd respondent and quash the same.	29.10.2018	Dismissed as Infructuous



WEB COPY

49. The case of the petitioner before this Court is that the Impugned Award is opposed to the public policy of India being in conflict with the limitation prescribed under the Limitation Act, 1963. The specific case of the petitioner is that though Ex.R-51 Unregistered Partnership Deed was executed with the respondents herein on 10.05.1993, it was never acted upon and therefore the respondents cannot ask for its dissolution.

50. It is submitted that thereafter the respondents herein had issued Ex.R-101 Notice on 18.11.2009 seeking to appoint an Arbitrator to resolve the dispute between the parties under Ex.R-51 Unregistered Partnership Deed dated 10.05.1993 after plaint in C.S.No.555 of 2006 was rejected by the Court vide Ex.R-99 Order dated 28.08.2009 in A.No.2103 of 2008 in C.S.No.555 of 2008.

51. The petitioner herein has also replied to the same by Ex.R-102 dated 02.12.2009. It is submitted that the on behalf of the petitioner that once C.S.No.555 of 2006 was filed on 6.7.2006, it should be deemed that the respondent/claimants abandoned the right resolve the dispute under the aegis of Arbitration.



O.P.No.1068 of 2019

52. Specifically, the learned Senior Counsel for the petitioner would submit that during the pendency of the suit that came to be instituted by the respondents in C.S.No.555 of 2006 before this court for declaration of the suit property on 05.06.2007, the respondents had filed O.P.No.15 of 2011 on 7.12.2012 under Section 11 of the Arbitration and Conciliation Act 1996 after invoking the Arbitration Clause vide Ex.R-6 legal Notice dated 13.11.2004.

53. It is submitted that after C.S.No.555 of 2006 was filed by the respondents on 06.07.2006, the questioning of reviving the arbitration proceeding was not available and therefore, the impugned Award is a nullity. It is submitted that question of re-starting arbitration proceeding once abandoned cannot be countenanced. It is submitted that merely because O.P.No.15 of 2011 was allowed on 05.09.2014, *ipso facto* did not mean that the substantive defence that the claim was barred by limitation need not be gone.

54. It is submitted that the learned Arbitrator committed a grave error in excluding the period between the date of presentation of C.S.No.555 of 2006 dated 06.07.2006 and Ex.R-101 Notice dated 18.11.2009 issued under Section 21 of the Arbitration and Conciliation Act, 1996 and under Section 14(1) of the Limitation Act, 1963 for the purpose of computation of limitation.



O.P.No.1068 of 2019

WEB COPY

55. It is submitted that the exclusion under Section 14(1) of the Limitation Act, 1963 should have been pleaded and without any pleading there cannot be any evidence or a finding regarding such exclusion.

56. He further submitted that C.S.No.555 of 2008 was filed on 06.07.2006 for declaration that the School property mentioned therein was that of the partnership firm M/s.Maruthi & Co under Ex.R-51 Unregistered Partnership Deed dated 10.05.1993 and for a permanent injunction to restrain the defendants therein namely, the 1st petitioner herein and her husband Raghuvelu Naidu who deposed evidence on behalf of the petitioner from interfering with the property in any manner or from interfering with the peaceful possession of the property allotted the petitioner vide Ex.R-46 dated 18.10.1986.

57. It is submitted that in the suit, written statement was filed and thereafter A.No.2103 of 2008 under Order 7 Rule 11 of C.P.C. was filed before this Court and by Ex.R-99 Order dated 28.08.2009, A.No.2103 of 2008 was allowed and thereby rejected the plaint filed by the respondents in the light of Section 69(1) of the Indian Partnership Act, 1932 by holding that the suit was without jurisdiction.



WEB COPY

58. The learned Senior Counsel for the petitioner submits that merely because Ex.R-99 Order dated 28.08.2009 came to be passed would not mean O.P.No.15 of 2011 could be either filed or the dispute resolved through arbitration.

59. It is submitted that order dated 05.09.2014 in O.P No15 of 2011 was later modified by an order dated 23.01.2015, *ipso facto* did not mean that the limitation which expired long before would stand revived or the period between 06.07.2006 and Ex.R-99 Order dated 28.08.2009 or Ex.101 Notice dated 18.11.2009 issued under Section 21 of the Arbitration and Conciliation Act, 1996 would stand excluded under Section 14(1) of the Limitation Act, 1963 for the purpose of computation after the petitioner's response in Ex.R-7 dated 24.11.2004 was not maintainable.

60. It is submitted that although a judicial order has passed under Section 11 of the Arbitration and Conciliation Act, 1996, the order merely directed the learned Arbitrator to resolve the dispute on merits which included substantial rights of limitation under Section 43 of the Arbitration and Conciliation Act, 1996.



WEB COPY

61. It is submitted that time period between the institution of the suit on 06.07.2006 of dismissal of the application filed under Order 7 Rule 11 of C.P.C. in Application No.2103 of 2011 in C.S.No.555 of 2006 vide Ex.R-99 Order dated 28.08.2009 can be excluded under Section 14 of the Limitation Act, 1963, only, if there was a pleading to the effect that the respondents had *bona fide* proceeded with C.S.No.555 of 2006.

62. It is submitted that though the petitioner had raised this issue as a supplementary/additional issues, the Tribunal has overruled the limitation against the petitioner even though there was no pleading to substantiate that the suit that was filed in C.S.No.555 of 2006 was being proceeded by the respondents in a *bona fide* manner.

63. It is submitted that the Impugned Award is opposed to the public policy of India it being passed in conflict with the provisions of the Limitation Act, 1963, in view of the fact the dispute between the parties arose as soon as Ex.R-6 Legal Notice dated 13.11.2004 issued under Section 21 was replied on 24.11.2004. Ex.R-7 Reply dated 24.11.2004 by the petitioner, denying the claim that the Partnership was not acted upon or was intended to be acted upon



O.P.No.1068 of 2019

and was not registered.

WEB COPY

64. It is submitted that the petitioner claimed that the subject property was her own property consequent to Ex.R-46 Allotment Order dated 18.10.1984 by the Tamil Nadu Housing Board (TNHB) and execution of Ex.R-56 Sale Deed dated 15.07.1994 in her favour.

65. It is submitted that the learned Arbitrator finding that the dispute would be barred by limitation but for the exclusion of the period from 06.07.2006 to 28.08.2009/18.11.2009 under Section 14 (1) of the Limitation Act, 1963 is an incorrect conclusion and thus the Impugned Award suffers from patent illegality and therefore, is liable to be set aside.

66. Further ,the issue of limitation was neither raised nor pleaded before the Hon'ble Chief Justice for any finding to be rendered on this aspect and in fact, the order of appointment of the Arbitrator states in no uncertain terms that the Arbitrator shall decide the issue on merits which would include the limitation also. It is submitted that the Hon'ble Chief Justice while passing order on 23.01.2015 appointing the learned Arbitrator did not give a seal of approval



O.P.No.1068 of 2019

as far as limitation.

WEB COPY

67. It is further submitted that the learned Sole Arbitrator committed a grave error of law apparent on the face of it in giving the benefit of exclusion under Section 14 of the Limitation Act, 1963 without any pleading by the respondents 1 to 3 in that regard, which is a violation of principles of natural justice for the reason that only if there is a pleading, the parties can have an opportunity to join issues on the same and therefore, the Award on this aspect is in violation of principles of natural justice.

68. It is further submitted that on the aspect of exclusion, the Hon'ble Supreme Court has ruled that it should be pleaded and without any pleading, there cannot be any evidence and there cannot be any finding and therefore the impugned Award of the Sole Arbitrator in according with the benefit of exclusion to the respondents 1 to 3/claimants even without any pleading therefore, has acted contrary to the law laid down by the Supreme Court of India reported in **Madhavrao Narayanrao Patwardhan Vs. Ram Krishna**



O.P.No.1068 of 2019

Govind Bhanu, AIR 1958 SC 767.

WEB COPY

69. It is submitted that in failing to adhere to the law declared on this aspect by the Hon'ble Supreme Court of India, the impugned Award violates the Public Policy of India.

70. It is further submitted that exclusion under Section 14 of the Limitation Act, 1963 is available only when there is prosecution of the suit in good faith. The definition of “good faith” under the Limitation Act has been explained by the Supreme Court in **Deena Vs. Bharat Singh and others**, 2002 (6) SCC 336 which is “due care” and “caution”. In the present case, when the application for rejection of plaint was filed, at that earliest point of time itself.

71. Therefore, the respondents could have withdrawn the suit and not prolonged the proceedings from 06.07.2006 to 18.11.2009 and this shows lack of good faith and therefore the benefit of exclusion of the period of pendency of the suit, from date of filing of rejection of the plaint to date of dismissal of the



O.P.No.1068 of 2019

suit, could not have been accorded to the 1st respondent to 3rd respondent. No evidence was let in by the claimant seeking exclusion.

72. It is further submitted that the respondents 1 to 3/claimants never disclosed filing of Section 11 Application in O.P.No.15 of 2011 on 07.12.2007 about the earlier claim for arbitration vide Ex.R-6 Notice dated 13.11.2004 and Ex.R-7 Reply dated 24.11.2004. They did not disclose the same in the Plaint in C.S.No.555 of 2006.

73. Therefore, it is submitted that it is evident that the respondents 1 to 3 had abandoned the arbitration as a remedy and hence cannot rely on Ex.R-6 Notice dated 13.11.2004 issued under Section 21 for the purpose of limitation under Section 43(2) of the Arbitration and Conciliation Act, 1996.

74. It is also submitted that the party can abandon the arbitration remedy and pursue the ordinary remedy which the respondents 1 to 3/claimants did. To enable them to pursue other remedy, they had to disclose Ex.R-5, Ex.R-6, Ex.R-7 and Ex.R-8 and instituting of two suits C.S.No.555 of 2006 and also a



O.P.No.1068 of 2019

Suit under Section 92 of the Act namely, C.S.No.196 of 2011. They also did not set up arbitration as a remedy when the petitioner sued the respondents in C.S.No.407 of 2006. It is further submitted that from the above, it is evident that the claimants had abandoned the arbitration as a remedy and having failed in C.S.No.555 of 2006 have opted recourse to Arbitration, which is impermissible.

75. It is further submitted that Section 21 of the Arbitration and Conciliation Act starts with the term 'unless otherwise agreed'. The respondents 1 to 3 by conduct abandoned the arbitration sought for by them under Ex.R-6 and instituted the suit in C.S.No.555 of 2006 without any reference to the Arbitration Clause and the petitioner in Ex.R-94 Application sought for rejection of the Plaint on the only ground of non-registration of Partnership and the suit not being maintainable under Section 69 (1) of the Indian Partnership Act, 1932.

76. Therefore, the respondents 1 to 3/claimants gave up Ex.R-6 and instituted C.S.No.555 of 2006 and we also acceded to that and only urged the ground of non-registration for the rejection of the plaint and therefore by the



conduct of parties the 1st limb of Section 21 is attracted as having agreed to give up the arbitration invoked by the respondents 1 to 3/claimants under Ex.R-6 Notice dated 13.11.2004.

77. Therefore, it is submitted that the respondent claimant cannot have the benefit of Section 21 read with Section 43(2) of the Arbitration and Conciliation Act, 1996

78. It is further submitted that the Award of the Sole Arbitrator has to stand on its own legs and it did not stand on Section 21 or Section 43(2) of the Arbitration and Conciliation Act, 1996, for the purpose of limitation. It is submitted that when there are two remedies open to a party and the party elects one of the remedies and issues Ex.R-6, then he has to pursue that remedy even if the other party is not willing by taking steps under Section 11 of the Arbitration and Conciliation Act, 1996.

79. Instead, he elected not to do so and abandoned the Arbitration as a remedy and instead instituted a suit *viz.*, C.S.No.555 of 2006. When Civil Court's remedy is invoked, the arbitration even assuming it has commenced under Ex.R-6 stood terminated. This is because a party cannot simultaneously



O.P.No.1068 of 2019

pursue two remedies for the same relief. Therefore, it is submitted that the commencement under Section 21 of the Arbitral Proceedings will not continue on the institution of the suit.

80. It is finally submitted that non-examination of all these aspects by the Sole Arbitrator renders the award perverse. The other reason given by the Sole Arbitration to negate the defense of limitation raised by the petitioner is that the order of the Hon'ble Chief Justice appointing the Arbitrator concludes the issue of limitation which finding is contrary to the law laid down by the Supreme Court which says that the limited scope of enquiry under Section 11 of the Act while appointing an Arbitrator is only to see if there is an Arbitration clause and whether the dispute is not stale.

81. It is submitted that it is a settled position of law that all the aspects of the dispute both legal and factual including jurisdiction will fall within the realm of adjudication of the Arbitrator and the Sole Arbitrator with great respect could not have relied on the order of the Hon'ble Chief Justice appointing the Arbitrator to decide the issue of limitation.

82. It is submitted that the Impugned Award is opposed to public policy



for the reason that the Sole Arbitrator has left the parties to bid for the property in an auction to be conducted among themselves by which the property will lose the character of allotment by the Housing Board for the purpose of running a School for economically weaker section and the approval of the plot for a School for economically weaker section is a part of the development of the housing scheme meant for the poor and it will defeat the very purpose of the scheme itself.

83. It is submitted that the scheme being in furtherance of the public policy in giving affordable education to economically weaker section, the direction is contrary to the said policy and therefore is opposed to the Public Policy of India.

84. It is further submitted that the respondents 1 to 3 had no intention that the School should run as, is evident from the proceedings instituted by them seeking demolition of the School building in W.P.No.13266 of 2016 Ex.R203, answers to the Question Nos.100 to 127 in the cross-examination proves the point.

85. This aspect of the matter would show the intention of the respondents



O.P.No.1068 of 2019

1 to 3 was profit maximization as opposed to the petitioner's readiness to return the loan taken with reasonable amount of interest. It is further submitted that there was no contribution towards stamp duty, building etc., and the contribution was limited to helping the petitioner to pay some EMIs to the Housing Board.

86. It is the further case of the petitioner is that in the above suit, the petitioner herein filed Application No.2103 of 2008 for rejection of the plaint under Order VII Rule 11 of C.P.C. and at that stage itself the respondents 1 to 3/claimants 1 to 3 ought to have withdrawn the suit and ought not to have prolonged the suit between 06.11.2006 to 09.11.2009 and thus it shows that the respondents 1 to 3/claimants 1 to 3 lack *bona fide* and the suit was not prosecuted good faith and therefore the benefit of exclusion for the purpose of commutating of Limitation would not inure to the respondents 1 to 3/claimants 1 to 3.

87. That apart, it is submitted that C.S.No.555 of 2006 was filed for a declaration that the subject property was Partnership Deed of partnership firm M/s.Maruthi & Co., was not disclosed when O.P.No.15 of 2011 was filed on 15.02.2010 (actually filed on 07.12.2007) before this Court for appointment of



O.P.No.1068 of 2019

WEB COPY

88. It is further submitted that having invoked the Arbitration Clause under the unregistered Partnership Deed dated 10.05.1993 vide Ex.R6 dated 13.03.2004, the Arbitration Proceeding is deemed to have commenced on or before 24.11.2004 being the date of reply in Ex.R-7 to Ex.R-6 Notice dated 13.11.2004 in view of Arbitration and Conciliation Act, 1996.

89. However, no steps were taken for initiating the arbitration proceedings by appointing an Arbitrator within a period of limitation under Article 137 in II Part III Division of Limitation Act and therefore, the Arbitral Tribunal has adjudicated stale, the relief sought for in the arbitral proceedings.

90. It is further submitted that the respondents also failed to disclose Ex.R-6 Notice dated 13.11.2004 and the Ex.R-7 petitioner's reply dated 24.11.2004 and thus, it is evident that the respondents 1 to 3 /claimants 1 to 3 had abandoned the remedy to resolve the dispute before the Arbitrator and therefore cannot rely on Ex.R6- Reply dated 13.11.2004 under Section 21 r/w



43(3) of the Arbitration and Conciliation Act, 1996.

WEB COPY

91. It is therefore submitted that the Impugned Award is liable to be set aside as being patently opposed to the public policy of India and in breach of principles of natural justice on the aspect of exclusion of period of limitation.

92. The learned Senior Counsel for the petitioner has relied on the following decisions:-

- i. **Associate Builders Vs. Delhi Development Authority**, (2015) 3 SCC 49
- ii. **SBP & Co. Vs. Patel Engineering Ltd. and another**, (2005) 8 SCC 618
- iii. **State of Orissa and another Vs. Damodar Das**, (1996) 2 SCC 216.
- iv. **Madhavrao Narayanrao Patwardhan and State of Bombay Vs. Ram Krishna Govind Bhanu and others**, AIR 1958 SC 767.
- v. **Debjoyti Gupta Vs. Indiabulls Securities Ltd. and another**, 2013 SCC OnLine Del 2466.
- vi. **State Farms Corporation of India Ltd. and another Vs. Dr.Mahendra Singh**, 2013 SCC OnLine Del 4889.
- vii. **Deena (dead) through Lrs. Vs. Bharat Singh (Dead) through Lrs. and others**, (2002) 6 SCC 336.



WEB COPY



O.P.No.1068 of 2019

- viii. **Vidya Drolia and others Vs. Durga Trading Corporation**, (2021) 2 SCC 1.
- ix. **Mr.RamasamyAthappan and another Vs. The Secretariat of the Court, International Chamber of Commerce and others**, 2009-3-L.W.580.
- x. **C.G.Holdings Private Limited and another Vs. Ramasamy Athappan**, 2011 SCC OnLine Mad 1078.
- xi. **Lindsay International Private Limited and others Vs. Laxmi Niwas Mittal and others**, 2020 SCC OnLine Cal 1658.
- xii. **Y.Harish and another Vs. Y.Satish and others**, passed by the Karnataka High Court, in W.P.No.10716 of 2022 (GM-CPC)
- xiii. **Arasmeta Captive Power Company Private Limited and Another Vs. Lafarge India Private Limited**, (2013) 15 SCC 414.
- xiv. **Unibros Vs. All India Radio**, 2023 SCC OnLine SC 1366.
- xv. **Arulvelu and others Vs. State represented by the Public Prosecutor and others**, (2009) 10 SCC 206.

93. Per contra, the learned Senior Counsel for the respondents would submit that this Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award of the Sole Arbitrator dated 18.03.2019 on the ground of patent illegality and opposed to Public Policy.



WEB COPY

94. It is submitted that Section 34 of the Arbitration and Conciliation Act, 1996 is the challenge procedure which enumerates 8 slots of challenge. It is submitted that precedents have held that Section 34 is neither an Appeal nor a Revision. It is not even a full-fledged judicial Review. It is a mere challenge to an Award with in the 8 slots adumbrated under Section 34 the Arbitration and Conciliation Act. In fact, Section 34 is a default provision.

95. It is further submitted that this Court in several Judgments has held that the legal drill which is mere challenges to an Arbitral Award is a delicate balance between blend of a sanctity of finality of Arbitral Awards and minimum judicial intervention ingrained in Section 35 and Section 5 respectively of the Arbitration and Conciliation Act and judicial Review on the other. This is because Section 35 of the Act contemplates finality of Arbitral Award and Section 5 stipulates that there shall be minimum interference as provided in this part.

96. It is further submitted that the precedents hold that Section 34 is not being as Appeal nor a full pledged Review, in a challenge procedure, the reasonableness of the reason stated by the Arbitrator cannot be gone into as the



challenge procedure is summary in nature. The rulings have further held that the Arbitration Tribunal is the sole and final Judge of the quantity and quality of Evidence before it. This Hodgkinson Principle has been referred to and explained by the Hon'ble Supreme Court in the case of **Associate Builders Vs. Delhi Development Authority**, 2015(3) SCC 49. Consequently, the sequiter that follows is that the Award of the Tribunal has to be tested within the contours and confines of Section 34 read with Sections 35 and 5 of the Arbitration and Conciliation Act, 1996.

97. It is further submitted that as the Act itself contemplates minimum judicial intervention in testing the impugned Award, the Rulings of the Courts have held that a detailed discussions touching upon Exhibits would tantamount to travelling beyond the scope of the aforesaid Sections.

98. It is submitted that in the aforesaid backdrop, the submissions of the petitioner before this Court should be tested. The thrust of the submission of the petitioner is that the institution of the Claim Petition is barred by Limitation as the Sole Arbitrator ought not to have taken into consideration the period spent on prosecuting C.S.No.555 of 2006.



99. The further submission of the petitioner before this Court is that the Partnership Deed was not acted upon and that the Partnership was a non-Starter. The amount given by the Respondents is only a loan and it is not towards the share in the partnership. Consequently, the submission before this Court is that if Ex.R-6 and Ex.R-7 are read together with Section 21 of the Arbitration and Conciliation Act, 1996, then, in terms of Section 43 of the Act, the Sole Arbitrator ought to have rejected the claim on the ground that it is barred by limitation. The failure of the Sole Arbitrator to consider the said Exhibits tantamount to ignoring the evidence on record and hence, the Award suffers from Patent illegality and it is opposed to public policy.

100. It is further submitted that at the outset, it is submitted that the aforesaid grounds raised before this Court is combination of facts and law. In fact, the very same plea was raised before the Sole Arbitrator and in Paragraph No.20 of the Award, the Sole Arbitrator has considered the import of Ex.R-6 and Ex.R-7 and the time taken in prosecuting C.S.No.555 of 2006 before this Court and has held that the Claim petition is not barred by Limitation.

101. It is further submitted that the said findings cannot be assailed under Section 34 of the Arbitration and Conciliation Act, 1996, as it constitutes



O.P.No.1068 of 2019

re-appreciation of Evidence before the learned Arbitrator, apart from venturing into examining the reasonableness of the reason given in the Award. As per Hodgkinson Principle the learned Arbitrator being a Sole and final Judge of the quality and quantity of Evidence, the submission of the petitioner is impermissible.

102. It is further submitted that the 2nd submission of the petitioner is that the Partnership was not acted upon and it was a non-starter. The Sole Arbitrator has dealt with the factual matrix in Paragraphs 26, 27 and 28 of the Award. The Partnership Deed has been marked as an Exhibit and the opening of the Account in the name of "Maruti & Co" is also filed.

103. The expenditures have been filed before the Sole Arbitrator. The Sole Arbitrator has also found that the entire dispute arose because of the petitioner herein attempted to oust the partner and the Trustees of 'Maruti Vidhyalaya Trust' and take over the institution to a family Trust created under the name and style 'NarravulaRukmuniVenkama Trust' which sought for recognition before the Authorities to run the institution.

104. This factual matrix cannot be revisited in a petition filed under



Section 34 of the Arbitration and Conciliation Act, 1996. In fact, RW-1 has admitted to the same in his Evidence which is also discussed by the Sole Arbitrator. The petitioner did not choose to adduce oral Evidence personally and appointed her husband RW-1 to adduce Evidence. The entire submissions of the petitioner are based on factual matrix and its interpretation thereof which again is impermissible in challenge procedure.

105. It is further submitted that the Sole Arbitrator as dealt with the facts and applicability of the Exhibits to the facts and hence, it cannot be reopened by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996. Therefore, the petition under Section 34 is liable to be rejected. Hence, the learned Senior Standing Counsel for the respondents prayed for dismissal of this Original Petition.

106. The learned Senior Standing Counsel for the respondents has relied on the following decisions:-

- i. Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (NHAI), (2019) 15 SCC 131.*
- ii. Emkay Global Financial Services Limited Vs. Girdhar Sondhi, (2018) 9 SCC 49.*
- iii. Fiza Developers and Inter-Trade Private Limited Vs. AMCI (India) Private Limited and another,*



WEB COPY



O.P.No.1068 of 2019

- (2009) 17 SCC 796.
- iv. **Associate Builders Vs. Delhi Development Authority**, (2015) 3 SCC 49.
 - v. **Canara Nidhi Limited Vs. M.Shashikala and others**, (2019) 9 SCC 462.
 - vi. **Kuldeep Singh Vs. Commissioner of Police and others**, (1999) 2 SCC 10.
 - vii. **H.B.Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal and others Vs. M/s.Gopinath& Sons and others**, 1992 Supp (2) SCC 312.
 - viii. **M/s.Kamaraji Port Limited Vs. M/s.Chettinad International Coal Terminal Pvt. Ltd.**, passed by this Court in O.P.No.47 of 2020, dated 28.07.2020.
 - ix. **M/s.14 Reels Entertainment Private Limited Vs. M/s.Eros International Media Limited**, passed by this Court in O.P.No.298 of 2020, dated 04.09.2020.
 - x. **Consulting Engineering Services (India) Pvt. Ltd. Vs. Project Director, Tamil Nadu Road Sector Project II**, 2019 SCC OnLine Mad 17882.
 - xi. **OPG Power Generation Pvt. Ltd. Vs. Shree Karthik Papers Ltd.**, passed by this Court in O.P.No.353 of 2020, dated 19.08.2020.
 - xii. **Sumitomo Heavy Industries Limited Vs. Oil and Natural Gas Corporation Limited**, (2010) 11 SCC 296.
 - xiii. **S.R.Tewari Vs. Union of India and another**, 2013 (6) SCC 602.
 - xiv. **M/s.L.G.Electornics India (P) Ltd. Vs. Dinesh Kalra**, 2018 SCC OnLine Del 8367.
 - xv. **Delhi Airport Metro Express Pvt. Ltd. Vs. Delhi Metro Rail Corporation Ltd.**, passed by the Hon'ble Supreme Court in Civil Appeal No.5627 of 2021, dated 09.09.2021.
 - xvi. **M/s.Glovis India Pvt. Ltd. Vs. M/s.Express Global Logistics Pvt. Ltd.**, passed by this Court in Arb.O.P.(Comm.Div.) No.183 of 2022, dated



O.P.No.1068 of 2019

18.04.2022.

WEB COPY

107. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents. I have also perused the crucial documents which formed the basis of the Arbitral Proceedings before the learned Arbitrator. Scope of interference under section 34 of the Arbitration and Conciliation Act, 1996 is very limited. This Court can neither sit as a Court of appeal nor re-appreciate the evidence placed before the Arbitral Tribunal or substitute the finding of the Arbitral Tribunal with its own conclusion on facts or evidence.

108. The scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996 is limited. The Court can either sit as a Court of Appeal or substitute its decision to that of the decision of the Arbitral Tribunal. The Court can neither reappreciate the evidence nor interfere. The Court can interfere with the Award under limited circumstances. If the Tribunal had ignored the vital evidence or has considered irrelevant materials, it would amount to perversity and in which case Award can be set aside as held by the Hon'ble Supreme Court in **Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI)**, (2019)



O.P.No.1068 of 2019

WEB COPY

109. In this connection the decision of the Hon'ble Supreme Court in **The Project Director, NHAI Vs. M. Hakim**, (2021) 9 SCC 1 is invited wherein it was held that the power to set aside an Arbitral Award under Section 34 of the Arbitration And Conciliation Act, 1996 does not include the authority to modify the Award. It further held that an Award can be 'set aside' only on limited grounds as specified in Section 34 of the Act and it is not an appellate provision. It further held that an application under Section 34 for setting aside an Award does not entail any challenge on merits to an Award.

110. The Hon'ble Supreme Court in **Ssangyong Engineering and Construction Co. Ltd., Vs. National Highway Authority of India**, (2019) 15 SCC 131 has held that an Award can be set aside on the ground of patent illegality under Section 34(2-A) of the Arbitration And Conciliation Act, 1996 only where the illegality in the Award goes to the root of the matter. It further held that **erroneous application of law by an Arbitral Tribunal** or the reappreciation of evidence by the Court under Section 34(2-A) of the Arbitration and Conciliation Act, 1996 is not available.



O.P.No.1068 of 2019

111. The Court held that the above ground is available only where the view taken by the Arbitral Tribunal is an impossible view while construing the contract between the parties or where the Award of the tribunal lacks any reasons.

112. The Court further held that an Award can be set aside only if an Arbitrator/Arbitral Tribunal decide(s) the question beyond the contract or beyond the terms of reference or if the finding arrived by the Arbitral Tribunal is based on no evidence or ignoring vital evidence or is based on documents taken as evidence without notice to the parties.

113. The Hon'ble Supreme Court in **Patel Engineering Ltd Vs. NEEPCO**, (2020) 7 SCC 167 held that patent illegality as a ground for setting aside an Award is available only if the decision of the Arbitrator is found to be perverse or so irrational that no reasonable person would have arrived at the same or the construction of the contract is such that no fair or reasonable person would take or that the view of the Arbitrator is not even a possible view.

114. The Hon'ble Supreme Court in **McDermott International Inc. Vs. Burn Standard Co. Ltd.**, (2006) 11 SCC 181 held that while interpreting the



terms of a contract, the conduct of parties and correspondences exchanged would also be relevant factors and it is well within the Arbitrator's jurisdiction to consider the same.

115. The Hon'ble Supreme Court in **Sutlej Construction Ltd. Vs. UT of Chandigarh**, (2018) 1 SCC 718, held that when the Award is a reasoned one and the view taken is plausible, re-appreciation of evidence is not allowed while dealing with the challenge to an Award under Section 34 of the Arbitration And Conciliation Act, 1996 for setting aside an Award. It further held that the proceedings challenging the Award cannot be treated as a first appellate court against a decree passed by a trial Court.

116. The Hon'ble Supreme Court in **Sheladia Associates Inc. Vs. TN Road Sector Project II, Represented by its Project Director**, 2019 SCC OnLineMad 17883 reminded itself of the Hodgkinson principle which has been explained by the Hon'ble Supreme Court in the oft-quoted and celebrated Associate Builders Case being **Associate Builders Vs. Delhi Development Authority**, (2015) 3 SCC 49.

117. It held that Hodgkinson principle in simple terms means that the



O.P.No.1068 of 2019

Arbitral Tribunal is the best judge with regard to quality and quantity of evidence before it. It further held that if there is no infraction of Section 28(3) of the Arbitration And Conciliation Act, 1996 the question of challenge on the grounds of public policy does not arise.

118. Following the principles enunciated in the decisions mentioned above, I am refraining from making any observations on merits of the dispute. I am also refraining from either reappreciating the evidence or the finding and conclusion arrived by the learned Arbitrator in the impugned Award.

119. I shall therefore confine the examination of the Impugned Award *qua* limitation which was argued at length by the learned Senior Counsel for the petitioner in the light of the facts discussed above.

120. The Arbitral Tribunal has excluded the period between 06.07.2006 being the date of filing of C.S.No.555 of 2006 and issuance of Ex.C-28/Ex.R-101 Notice dated 18.11.2009 after Ex.R-99 Order was passed on 28.08.2009 in A.No.2103 of 2008 in C.S.No.555 of 2006 under Order VII Rule 11 of the Code of Civil Procedure, 1908 under Section 14(2) of the Limitation Act, 1963.



121. Relevant Portion of the Impugned Award of the Arbitral Tribunal

insofar as this aspect is concerned, reads as under:-

20..... I am unable to accept the submission and it is well settled that the arbitration proceedings are not strictly governed by the strict rule of evidence or pleadings. The facts of the case would clearly show that the Claimants have filed C.S.No.555/2006 on the file of the High Court, Madras for a declaration that the suit property is partnership property. Since the partnership deed is an unregistered deed, the Hon'ble High Court, Madras in A.No.2103/2008 in C.S.No.555/2006 by order dt. 28.08.2009 (Ex.R99) held that in view of the embargo found in section 69 of the Indian Indian Partnership Act for the unregistered partnership as well as the partners to approach the civil court, the Hon'ble High Court held that the suit is not maintainable and the plaint has to be rejected under Order VII Rule 11 of the Code of Civil Procedure and accordingly it was rejected. It was not a decision on merits of the case as in view of the embargo u/s. 69(1) of the Indian Indian Partnership Act the suit between the two partners of an unregistered partnership firm was held to be prohibited. After the order passed by the Hon'ble High Court on 28.8.2009 the legal notice under 18.11.2009 (C28) for appointment of Arbitrator was issued on behalf of the Claimants. The suit was instituted on 6.7.2006 and the plaint was rejected on 28.8.2009. I hold that the Claimants approached the civil court which is a wrong forum for enforcement of the rights under the partnership deed and if that is not so, there would not have been any occasion for the Claimants to approach the civil court seeking the declaratory relief. Moreover it must be mentioned here that in O.P.No.15/2011 filed u/s.11 of Arbitration and Conciliation Act in para 25 of the petition, the



WEB COPY



O.P.No.1068 of 2019

*Claimants have stated that the period of limitation to be excluded from the date of presentation of the plaint till the rejection of plaint in C.S.No.555/2006 and the Claimants were acting bonafide in filing the suit C.S.No.555/2006 which was ultimately rejected on the technical ground by the Hon'ble High Court, Madras and the Claimants have stated that the present claim for appointment of Arbitrator is well within the period of limitation. On the basis of the pleadings, the Hon'ble Chief Justice in O.P.No.15/2011 by order dt.5.9.2014 appointed Hon'ble Mr. Justice Doraisamy Raju, Judge, Supreme Court of India as Arbitrator. Since Hon'ble Mr. Justice Doraisamy Raju recused himself from the proceedings, the present Arbitral Tribunal was appointed by Hon'ble Chief Justice on 23.12.2015. The 1st respondent has filed a petition for review of the order and the Hon'ble Chief Justice in A.No.435/2015 in O.P.No.15/2011 dt.30.10.2015 held that there appears to be no impediment in the arbitration proceedings for deciding the merits of the dispute inter se the parties and dismissed the review application. As against the order of Hon'ble Chief Justice, SLP (C)No.8281/2016 was filed before the Hon'ble Supreme Court of India and Hon'ble Supreme Court of India by order dt.2.5.2016 dismissed the Special Leave Petition. The Hon'ble Supreme Court of India in **S.B.P. & Co vs Patel Engineering Ltd. & Anr** on 26 October, 2005 held as under:-*

- i. The power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Act is not an administrative power. It is a judicial power.*
- ii. The power under Section 11(6) of the Act, in its entirety, could be*



WEB COPY



O.P.No.1068 of 2019

delegated, by the Chief Justice of the High Court only to another judge of that court and by the Chief Justice of India to another judge of the Supreme Court.

iii. In case of designation of a judge of the High Court or of the Supreme Court, the power that is exercised by the designated, judge would be that of the Chief Justice as conferred by the statute.

iv. The Chief Justice or the designated judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgment. These will be, his own jurisdiction, to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a Jive claim, the existence of the condition for the exercise of his power and on the qualifications of the Arbitrator or Arbitrators. The Chief Justice or the judge designated would be entitled to seek the opinion of an institution in the matter of nominating an Arbitrator qualified in terms of Section 11 (8) of the Act if the need arises but the order appointing the Arbitrator could only be that of the Chief Justice or the judge designate.

v. Designation of a district judge as the authority under Section 11(6) of the Act by the Chief Justice of the High Court is not warranted on the



scheme of the Act.

*21.I therefore hold that the order of the Hon'ble Chief Justice appointing Arbitrator is a judicial order and the point of limitation was also raised in the petition for appointment of Arbitrator and respondent has challenged the same by filing a review petition which was also dismissed by the Hon'ble Chief Justice and informed by the Hon'ble Supreme Court of India. **The plea regarding the exclusion of time period during which civil proceedings were pending was raised when the Hon'ble Chief Justice appointed the Arbitrator, the order has been conclusive as it is a judicial order and it is concluded by the order of the Hon'ble Chief Justice appointing Arbitrator. The 1st respondent has relied on decision of Supreme Court in **Konkan Railway Corporation Ltd. & vs. Rani Construction Pvt. Ltd** 2002 SCC388 and **Food Corporation of India Vs. Indian Council of Arbitration and others** 2003 6 SCC 564 are all decisions of Supreme Court in **S.B.P. & Co vs Patel Engineering Ltd. & Anr** on 26 October, 2005. Even otherwise I hold that there cannot be any dispute that the provisions of Limitation Act would be applicable to the arbitration proceedings. The Claimants were prosecuting with due diligence and with bonafide intention the Civil proceedings in the Civil Court in **C.S.No.555/2006** and the plaint was rejected on technical ground that the partnership was formed under an unregistered deed and I hold that the period during which the civil proceedings were pending should be excluded and the plea of bonafide in pursuing the other proceeding was raised and if it is excluded the present arbitration proceedings are well within the period of limitation.***

The fact that the period of exclusive is not stated in the statement of claim is not material as the provisions of code of civil procedures are not applicable to the arbitration proceedings and the records show that



WEB COPY



O.P.No.1068 of 2019

*there is plea for exclusion of time and the plea raised for exclusion of the period during the civil proceedings were pending can be accepted. In this connection it is relevant to refer to the decision of Supreme Court in **Simplex Infrastructure Ltd. Vs. Union of India** 2019 2 SCC 455 wherein the Supreme Court held as under:-*

Section 14 of the Limitation Act deals with the "exclusion of time of proceeding bona fide" in a court without jurisdiction, subject to satisfaction of certain conditions. The question whether Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the 1996 Act has been answered by this Court in Consolidated Engineering Enterprises v Principal Secretary, Irrigation Departments. This court observed thus:

"At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the said Act. On the 8 (2008) 7 SCC 169 at para 23 contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a suit in a court. Hence, Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies



WEB COPY



O.P.No.1068 of 2019

to the proceedings of a suit in the court. Sub-section (4) of Section 43, inter alia, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceeding: till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the powers under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised suo-motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period



WEB COPY



O.P.No.1068 of 2019

of four months. From the scheme and language of Section 34 of the Act of 1996, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award."

22. Section 14 of the Limitation Act, as observed, does not provide for fresh period of limitation, but only provides for exclusion of time for a certain period, having regard to the legislative intent, where the Claimants have stated that the period during which the civil proceedings are pending before High Court should be excluded that Claimants would be justified in taking such a plea and the period during which the civil proceedings were pending in C.S.No.555/2006 should be excluded and if it is excluded the present proceedings are within time and maintainable."

122. Ex.R-10 plaint in C.S.No.555 of 2006 was instituted on 06.07.2006.

C.S.No.555 of 2006 was filed by the claimants (Respondents 1 to 3 herein).

The prayer in Ex.R10 Plaint in C.S.No.555 of 2006 reads as under:-

- a) declaring that the property more particularly mentioned in the schedule hereunder is the property of the partnership firm M/s.Maruthi&Co;*



- b) for a permanent injunction restraining the first and second defendants, their men, agents, servants or any person claiming through or under them from in any manner dealing with the property more particularly described in the schedule hereunder or alienating the same;*
- c) for a permanent injunction restraining the first and second defendants, their men, agents, servants or any person claiming through or under them from in any manner disturbing the peaceful possession of the plaintiffs in the property;*
- d) for costs of the suit.*

123. The suit was for a declaration that the property allotted to the petitioner by the Tamil Nadu Housing Board (TNHB) vide Ex.R-46 Allotment Order dated 18.10.1984 in respect of which Ex.R-56 Sale Deed dated 13.07.1994 was executed by Tamil Nadu Housing Board (TNHB) in favour of the petitioner was that the partnership firm in Ex.R-51 Partnership Deed dated 10.05.1993.

124. Ex.R-10 Complaint refers 40 documents starting from letter dated 02.05.1989 of the petitioner and several letters exchanged between 1990 ending with 25.04.1996. Rest of the documents are as follows:-



Sl.No.	Date/Year	Parties to Document	Description of Document
35.	1988-1990	1 st Defendant to 1 st plaintiff's husband	Original Receipts (24 Nos.)
36.	1988-1990	1 st Defendant to 3 rd Plaintiff	Original Receipts (12 Nos.)
37.	1988-1990	1 st Defendant to 3 rd Defendant's father	Xerox Receipts (12 Nos.)
38.	1988-1990	Plaintiffs and Defendants	Xerox Statement of Accounts
39.	13.05.2006	Plaintiffs	Xerox Photographs (8 Nos.)
40.	13.07.1994	Tamil Nadu Housing Board to 1 st Defendant	Xerox Sale Deed

125. The Cause of Action Paragraph in Ex.R-10 Plaint in C.S.No.555 of 2006 read as under:-

“21. The cause of action for this suit arose in the year 1984 within the jurisdiction of this Hon'ble Court, where the suit property is situate from when the plaintiffs and the third defendant made contributions and when a partnership was entered into, on 10.5.1993 when a partnership deed was entered into clearly indicating that the property would be that of the partnership on 13.7.1994 when the sale deed was obtained by the first defendant in her name with the help of the plaintiffs, during the year 2006 and especially on 8.4.2006 when the first defendant expressed that the property was owned only by her exclusively and subsequently thereafter when the first and second defendant have been attempting to keep the plaintiffs away and when they have been attempting to establish their exclusive right over the same.”



O.P.No.1068 of 2019

126. Cause Title in Ex.R-10 plaint of C.S.No.555 of 2006 filed on 06.07.2006 reveals that it was filed by the claimants (Respondents 1 to 3 herein) against the petitioner, the petitioner's husband, wherein the 4th respondent herein was arrayed as a proper party as the 3rd defendant (who was the 2nd respondent in the arbitral proceeding).

127. Ex.R-10 Plaint in C.S.No.555 of 2006 was inspired from the purported right under Ex.R-51 Unregistered Partnership Deed dated 10.05.1993. Ex.R-10 Plaint was signed by all the claimants namely, respondents 1 to 3 herein. The share of the respective partners in Ex.R-51 Partnership Deed dated 10.05.1993 are in proportion of the alleged contribution by them for a sum of Rs.3,57,840/-.

128. Ex.R-51 Unregistered Partnership Deed dated 10.05.1993 was signed between the petitioner, 1st respondent, 2nd respondent & 3rd respondent and by Dr.G.Srinivasan for and on behalf of the 4th respondent. The 4th respondent herein was admitted to the partnership as a minor at the time of execution of Ex.R-51 Partnership Deed dated 10.05.1993. Ex.R-51 Partnership Deed dated 10.05.1993, is not a registered Partnership Deed.



O.P.No.1068 of 2019

WEB COPY

129. As per Ex.R-10 Plaint in C.S.No.555 of 2006 the dispute between the petitioner and the partners in partnership firm allegedly arose as early as 08.04.2006 when the petitioner is said to have expressed that the property was owned only by her exclusively and subsequently thereafter when the petitioner and her husband allegedly attempted to keep the respondents 1 to 3/claimants away from it.

130. The dispute in C.S.No.555 of 2006 was the land that was allotted to the petitioner by the Tamil Nadu Housing Board (TNHB) vide Ex.R-46 Allotment Order dated 18.10.1984 in respect of which Ex.R-56 Sale Deed dated 13.07.1994 was executed in favour of the petitioner by the Tamil Nadu Housing Board (TNHB) and registered as Document No.3325 of 1994. The said property was purportedly given by the petitioner to partnership firm under Partnership Deed vide Ex.R-51 Partnership Deed dated 10.05.1993 in respect of which the petitioner exercised rights to the exclusion of the other partners.

131. However, it is noticed that the arbitration proceedings were initiated for resolution of dispute in the said partnership firm namely “Maruthi & Co” on



the strength of Clause 23 of the Ex.R-51 Partnership Deed dated 10.05.1993 by

the 3rd respondent/3rd claimant as early as 13.11.2004 when Ex.R6 Notice dated

13.11.2004 was issued by the 3rd respondent/claimant to the petitioner and others under Section 21 of the Arbitration and Conciliation Act, 1996.

132. Thus, the clarion call for the dispute began with the issue of Ex.R-6 Notice dated 13.11.2004 by the 3rd respondent/claimant under Section 21 of the Arbitration and Conciliation Act, 1996 to all the parties herein. Ex.R-6 Notice dated 13.11.2004 was also marked by the 3rd Respondent/claimant to all the parties including Smt.Revathy Rajaram W/o.Dr.K.Rajaram though she is neither a partner of the partnership firm M/s.Maruthi & Co in Ex.R-51 Partnership Deed dated 10.05.1993 nor a Trustee under Ex.R-65 Trust Deed dated 25.04.1996.

133. The call for dissolution of Partnership Firm was made for the first time with the issuance of Ex.C-28/R-101 dated 18.11.2009 to the petitioner after Ex.R-99 Order dated 28.08.2009 came to be passed in A.No.2103 of 2008 in C.S.No.555 of 2006 rejecting Ex.R-10 plaint in C.S.No.555 of 2006.



134. Thus, the arbitration proceeding which commenced earlier on 24.11.2007 vide Ex. R.7 Reply Notice dated 24.11.2007 Ex.R.6 Notice dated 13.11.2004 was issued by the 3rd respondent/claimant to the partner was for accounts. The arbitration proceeding which commenced on 24.11.2007 was different from the arbitration proceeding which commenced for dissolution of partnership firm pursuant to issuance of Ex.C28/Ex.R-101 dated 18.11.2009.

135. However, the learned Arbitrator has confused the same and treated both as a constitution of same proceeding, ignoring them by extending the benefit of Section 14 of the Limitation Act, 1963. Thus, there is a patent illegality which goes to the root of the dispute between them.

136. The fact remains that the respondents 1 to 3/claimants had filed Ex.R-10 plaint dated 06.07.2006 and instituted C.S.No.555 of 2006 for declaring that the subject property was that of the Partnership Firm viz., M/s.Maruthi & Co. under Ex.R-51 Unregistered Partnership Deed dated 10.05.1993.

137. Thus, the arbitration proceeding relating to the ownership of the land allotted to the petitioner by the Tamil Nadu Housing Board (TNHB) vide



O.P.No.1068 of 2019

Ex.R-46 Allotment Letter dated 18.10.1984 in respect of which Ex.R-56 Sale Deed dated 15.07.1994 was executed by the Tamil Nadu Housing Board (TNHB) in favour of the petitioner commenced as early as 24.11.2004 when the petitioner responded to Ex.R-6 Notice dated 13.11.2004 issued by the 1st respondent/claimant to the petitioner under Section 21 of the Arbitration and Conciliation Act, 1996, vide Ex.R-7 Reply dated 24.11.2004.

138. Ordinarily, the limitation for filing a suit for accounts in a partnership arises after dissolution of firm under Article 5 of Part I Division of the Limitation Act, 1963.

139. There was no impediment for the respondents 1 to 3/claimants from proceeding with the arbitration for resolving all the dispute including of the said dispute for dissolution of Partnership Firm in terms of the Arbitration Agreement under Ex.R-51 Unregistered Partnership Deed dated 10.05.1993 then and there.

140. The Hon'ble Supreme Court in **Prem Lata Vs. Ishar Dass Chaman**



Lal, (1995) 2 SCC 145 has clarified that arbitration proceeding can be initiated

for dissolution of firm. In Paragraph 9, the Hon'ble Supreme Court held as

under in the context of Section 20 of the Arbitration Act, 1940:-

*“9. The exceptions carved out by sub-s.(3) are to enforce those rights including the rights to dissolution of the partnership despite the fact that the partnership firm was an unregistered one. Having kept that object in view we are of the considered opinion that the alternative resolution forum agreed by the parties, namely, reference to a private arbitration is a mode of enforcing the rights 'given under clause (a) of sub-s.(3) of s.69 of the Act and gets excluded from the main part of sub-s.(3) and sub-ss.(1) and (2) of 69. **The enforcement of the right to sue for dissolution includes a right for reference to an arbitration in terms of the agreement of the partnership by and between the parties. Therefore, there is no embargo for filing a suit under s.20 of the Arbitration Act, 1940.**”*

141. A Provision identical to Section 20 of the Arbitration Act, 1940 is not present in Arbitration and Conciliation Act, 1996. It is somewhat similar to Section 11 of the Arbitration and Conciliation Act, 1996. Section 20 of the Arbitration Act, 1940 read as under:-

“20. Application to file in Court arbitration agreement:

(1) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in



the matter to which the agreement relates, that the agreement be filed in Court.

- (2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.*
- (3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed.*
- (4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the Arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an Arbitrator, to an Arbitrator appointed by the Court.*
- (5) Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable.”*

142. A similar view was taken by the Hon'ble Supreme Court in **Prabhu Shankar Jaiswal Vs. Sri Shoe Narain Jaiswal and others**, (1996) 11 SCC 225. Dealing with an identical situation, the Hon'ble Supreme Court held although the partnership firm may be unregistered, one partner can sue the other partners for dissolution of the firm and for accounts. The Court followed its view in **Prem Lata's case** (cited supra).



WEB COPY

143. The Hon'ble Supreme Court further held that a proceeding may be either by way of a suit or it can even be a proceeding under the Arbitration Act to secure these rights through arbitration. Relevant passage from the above judgment reads as under:-

“6. Under sub-section (3)(a) this bar will not affect the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm or any right or power to release the property of a dissolved firm. Therefore, although the partnership firm may be unregistered, one partner can sue other partners for dissolution of the firm and for accounts. The words “to sue” used in sub-section (3)(a) cannot be construed narrowly to refer only to suits for dissolution of partnership and accounts. The exception contained in sub-section (3)(a) applies not merely to sub-sections (1) and (2) but also to the first part of sub-section (3) which deals with proceedings other than suits. Therefore, in order that sub-section (3)(a) would apply to all these provisions, the words “to sue” in in sub-section (3)(a) must be understood as applying to any proceedings for dissolution of partnership or for accounts of a dissolved firm or to realise the property of a dissolved firm. This proceeding may be either by way of a suit or it can be a proceeding under the Arbitration Act to secure these rights through arbitration. (Vide Prem Lata v. Ishar Dass Chaman Lal [(1995) 2 SCC 145]) a judgment to which one of us was a party.) Therefore, an arbitration clause in a partnership deed of an unregistered partnership can be enforced for the purpose of securing, inter alia, a dissolution and accounts of the partnership or for enforcing any right or power for obtaining the property of a dissolved firm.”



WEB COPY

144. The petitioner is the Trustee for life under Ex.R-65 Trust Deed dated 25.04.1996 unless she resigns. The petitioner is the Chairman/Managing Trustee of the Trust under Ex.R-65 Trust Deed dated 25.04.1996, while the other persons named are its Trustees as mentioned i.e., the beginning of this order.

145. As mentioned elsewhere, Ex.R-65 Trust Deed dated 25.04.1996 authored by the petitioner herein as a founding Trustee was for providing Education of all kinds, relief to the poor and Medical relief and any other objects of General Public Utility not involving all activity for profit in India. It is for a different purpose.

146. The object of Ex.R-65 Trust Deed dated 25.04.1996 is charitable where as the object of the partnership in Ex.R-51 of the Partnership Deed dated 10.05.1993 was for running a school on profit. Only if it was acted upon, question of profits being distributed in proportion to the contribution in it can be contemplated.

147. That apart, on dissolution of a partnership firm, a partner or partners



can demand for accounts. Independently, a partner can initiate proceeding for dissolution either before the Court or before the Arbitrator in terms of Section 69(3) of the Indian Partnership Act, 1932.

148. Ex.R-10 plaint of C.S.No.555 of 2006 was filed within the period of limitation of three year from receipt of Ex.R-6 Legal Notice dated 13.11.2004 by the petitioner on or before issuance of Ex.R-7 Reply of the petitioner dated 24.11.2004, though in Paragraph 21 of Ex.R-10 Plaint in C.S.No.555 of 2006, it has been stated that cause of action arose on 08.04.2006.

149. The limitation for filing a suit for declaration is a general remedy. It is governed by Article 58 of Part III of the First Division to Limitation Act, 1963. Whereas limitation for filing Section 11 application/petition for appointment of Arbitrator is three years from the date when the right to apply accrues. The limitation for account and shares in the profits of a dissolved partnership firm is three years under Article 5 of Part-I of the First Schedule of the Limitation Act, 1963.

150. Article 5 of Part-I of First Division, Article 58 of Part-III of First Division, Article 113 of Part-X of First Division and Article 137 of Part-II of



O.P.No.1068 of 2019

Third Division of the Limitation Act, 1963 are extracted below:-

First Division			Third Division
Part-I	Part-III	Part-X	Part-II
Article-5	Article-58	Article-113	Article-137
Description of the Suit:			
For an account and a share of the profits of a dissolved partnership.	To obtain any other declaration.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Any other application for which no period of limitation is provided elsewhere in this Division.
Period of Limitation:			
3 years			
Time from which period begins to run			
The date of the dissolution.	When the right to sue first accrues.	When the right to sue accrues.	When the right to apply accrues.

151. As per Section 14(1) of the Limitation Act, 1963, in computing the period of limitation for any suit, time during which a plaintiff was prosecuting another civil proceeding, whether in a Court of first instance or appeal or revision against the defendant with the due diligence shall be excluded where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

152. Under Sub-Section (2) to Section 14 of the Limitation Act, 1963, in computing the period of limitation for any application, the time during which



the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. Sub-Section (2) to Section 14 of the Limitation Act, 1963 reads as under:-

“14(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.”

153. Ex.R-10 Plaint in C.S.No.555 of 2006 filed by the respondents 1 to 3 (claimants) was rejected by the Court vide Ex.R-99 Order dated 28.08.2009 in A.No.2103 of 2008 filed by the petitioner under Order VII Rule 11 of CPC to reject the plaint.

154. The respondents 1 to 3 (claimants) filed the plaint in C.S.No.555 of 2006 without referring either to Ex.R-6 Letter dated 13.11.2004 invoking the arbitration clause in Ex.R-51 Unregistered Partnership Deed dated 10.05.1993



O.P.No.1068 of 2019

or to reply of the petitioner vide Ex.R-7 dated 24.11.2004 or Ex.R-210 Letter dated 13.12.2004 of the first respondent's husband on behalf of first respondent or Ex.R-8 Letter dated 22.12.2004 issued on behalf of the 4th respondent by his mother Mrs.Rajeshwari.

155. A “Partnership” is a relation between the persons who have agreed to share the profits of a business carried on by all or any of them acting for all. As per Section 7 of the Indian Partnership Act, 1932, where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is a ‘partnership at will’.

156. The relation between the parties hereto in Ex.R-51 Partnership Deed dated 10.05,1993 is a partnership at will as no duration was fixed for the partnership between them.

157. Chapter 6 of the Indian Partnership Act, 1932 deals with the provisions relating to dissolution of firm. As per Section 39 of the Indian Partnership Act, 1932, the dissolution of partnership between all the partners of a firm is called " dissolution of the firm".



WEB COPY

158. As per Section 40 of the Indian Partnership Act, 1932, a firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

159. Under Section 41(b) of the Indian Partnership Act, 1932, a firm can be dissolved compulsorily if any event happens which makes it unlawful for the business of the firm to be carried on or which disables for the partners to carry on the business in partnership. Section 41(a) was deleted by Clause (a) of Act 31 of 2016.

160. Section 42 of the Indian Partnership Act, 1932, specifies certain instances where a firm can be dissolved subject to contract between the partners. They are as follows:-

- a) if constituted for a fixed term, by the expiry of that term;*
- b) if constituted to carry out one or more adventures or undertakings by the completion thereof;*
- c) by the death of a partner;*
- d) by the adjudication of a partner as an insolvent.*



O.P.No.1068 of 2019

161. Under Sub-Section 1 to Section 43 of the Indian Partnership Act, 1932, “a partnership firm at will” may be dissolved by giving a notice in writing to all the other partners of his intention to dissolve the firm. In this case, admittedly, no notice for dissolution of firm was issued when Ex.R-6 Legal Notice dated 13.11.2004 was issued by the 3rd respondent/claimant. In Ex.R-6 Legal Notice dated 13.11.2004 issued to the petitioner with copy marked to all the partners, the 3rd respondent/claimant wanted accounts and share in the profit and wanted an amicable resolution of dispute failing which the 3rd respondent/claimant, wanted to the petitioner to come for an arbitration.

162. Under Sub-Section 2 to Section 43 of the Indian Partnership Act, 1932, a firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

163. While dealing with Section 43(1) of the Indian Partnership Act, 1932, the Hon'ble Supreme Court in **Banarsi Das and Kundan Lal Vs. Kanshi Ram and others**, AIR 1963 SC 1165 held that a partnership would be deemed to be dissolved when the summons accompanied by a copy of the plaint is



served on the defendant, where there is only one defendant, and on all defendants, when there are several defendants.

164. The Court held that since a partnership will be deemed to be dissolved only from one date, the date of dissolution would have to be regarded to be the one on which the last summons was served. Relevant passage from the Judgment reads as under:-

"11..... In a partnership at will, if one of the partners seeks its dissolution, what he wants is that the firm should be wound tip, that he should be given his individual share in the assets of the firm (or may be that he should be discharged from any liability with respect to the business of the firm apart from what may be found to be due from him after taking accounts) and that the firm should no longer exist. He can call for the dissolution of the firm by giving a notice as provided in sub-s. (1) of s. 43 i.e., without the intervention of the court, but if he does not choose to do that and wants to go to the court for effecting the dissolution of the firm, he will, no doubt, be bound by the procedure laid down in O.20, r. [of the Code of Civil Procedure](#), which reads thus:

"Where a suit is for the dissolution of a partnership or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate share of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks



fit."

WEB COPY

This rule makes the position clear. No doubt, this rule is of general application, that is, to partnerships at will as well as those other than at will; but there are no limitations in this provision confining its operation only to partnerships other than those at will. **Sub-s. (1) of s. 43 of the Partnership Act does not say what will be the date from which the firm will be deemed to be dissolved.** For ascertaining that, we have to go to sub-s. (2) which reads thus:

"The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice."

12. Now, it will be clear that this provision contemplates the mentioning of a date from which the firm would stand dissolved. Mentioning of such a date would be entirely foreign to a plaint in a suit for dissolution of partnership and therefore such a plaint cannot fall within the expression "notice" used in the Sub-Section. **It would follow therefore that the date of service of a summons accompanied by a copy of a plaint in the suit for dissolution of partnership cannot be regarded as the date of dissolution of partnership and s.43 is of no assistance.**

13. Even assuming, however, that the term "notice" in the provision is wide enough to include within it a plaint filed in a suit for dissolution of partnership, **the sub-section itself provides that the firm will be deemed to be dissolved as from the date of communication of the notice. It would follow, therefore, that a partnership would be deemed to be dissolved when the summons accompanied by a copy of the plaint is served on the defendant, where there is only one defendant, and on all**



WEB COPY



O.P.No.1068 of 2019

defendants, when there are several defendants. Since a partnership will be deemed to be dissolved only from one date, the date of dissolution would have to be regarded to be the one on which the last summons was served. Now, if the High Court wanted to give the benefit of the provisions of s. 43 to any of the parties-defendants before it, it should have borne in mind the full implications of those provisions. We have no material on record for ascertaining the date on which the last summons was served in this case. Since that date is not known or could have been known by the High Court, it was in error in holding that the suit was barred by time.”

165. Under Section 69(1) of the Indian Partnership Act, 1932, no suit to enforce a right arising from a contract or conferred by the Act can be instituted in any court by:-

- a) *or on behalf of any person suing as a partner in a firm against the firm; or*
- b) *any person alleged to be or to have been a partner in the firm, unless the firm is registered and person suing is or has been shown in the Register of firms as a partner in the firm.*

166. As per Section 69(2) of the Indian Partnership Act, 1932, “No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the



O.P.No.1068 of 2019

person suing are or have been shown in the Register of firm as partners in the firm".

167. As per Section 69(2) of the Indian Indian Partnership Act, 1932, no suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the person suing are or have been shown in the Register of firm as partners in the firm.

168. However, partners of unregistered partnership firm can sue for the enforcement of any right to sue for dissolution of a firm or accounts of a dissolved firm or to release the property of a dissolved firm. In view of the decision mentioned above, right to sue includes right to approach an Arbitrator.

169. This view is also in line with Paragraph 17 of the Statement of Objects to the Partnership Act, 1932. Paragraph 17 of the Statement of Objects and Reasons, explains the departure from the English Law. It reads as under:-

*“17. The outlines of the scheme briefly as follows and are:
The English precedent in so far as it makes registration compulsory and imposes penalty for non-registration has not been followed, as it is considered that this step would be too drastic for a beginning in India and would*



WEB COPY



O.P.No.1068 of 2019

introduce all the difficulties connected with small and ephemeral undertakings. Instead, it is proposed that registration should lie entirely within the discretion of the firm or partner concerned; but, following the English precedent, any firm which is not registered will be unable to enforce its claims against third parties in the Civil Courts; and any partner who is not registered will be unable to enforce his claims either against third parties or against his fellow partners. One exception to this disability is made – An unregistered partner in any firm, registered or unregistered, may sue for dissolution of the firm. This exception is made on the unregistered, may sue for dissolution of the firm. This exception is made on the principle that registration is designed primarily to protect third parties, and the absence of registration need not prevent the disappearance of an unregistered or imperfectly registered firm. Under this scheme a small firm or a firm created for a single venture not meeting with difficulty in getting payment, need never register; and even a firm with a large business need not register until it is faced with litigation. Registration may then be effected at any time before the suit is instituted. The rights of third parties to sue the firm or any partner are left intact.”

170. As per Section 69(3) of the Indian Partnership Act, 1932, the provisions of sub section (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect –

- a) *The enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm or;*
- b) *The powers of an official assignee, receiver of Court under the Presidency, towns insolvency Act*



1909, or the Provincial insolvency Act, 1920, to realise the property of an insolvent partner.

171. Section 69 of the Indian Partnership Act, 1932 reads as under:-

“69. Effect of non-registration:

- 1) No suit to enforce a right arising from a contract of or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of firms as a partner in the firm.*
- 2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the person suing are or have been shown in the Register of firm as partners in the firm.*
- 3) The provisions of sub section (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect -*
 - a) The enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm or*
 - b) The powers of an official assignee, receiver of Court under the Presidency-Towns Insolvency Act 1909,*



or the Provincial insolvency Act, 1920, to realise the property of an insolvent partner.

4) This section shall not apply

- a) To firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which by notification under section 56, this chapter does not apply, or*
- b) to any suit or claim of set off not exceeding one hundred rupees in value which in the presidency towns, is not of a kind specified in Section 19 of the Presidency Small Cause Court Act, 1882 or outside the Presidency Towns, is not of a kind specified in the Second Schedule to the Provisional Small Cause Courts Act 1887 or to any proceeding or execution in other proceeding incidental to or arising from any such suit or claim.*

172. Thus, Ex.R-10 plaint in C.S.No.555 of 2006 was thus rightly rejected by this Court vide Ex.R-99 Order dated 28.08.2009 in A.No.2103 of 2008 in C.S.No.555 of 2006, since Ex.R-51 Partnership Deed dated 10.05.1993 is an unregistered Partnership Deed.



O.P.No.1068 of 2019

173. Ex.R-10 Plaint in C.S.No.555 of 2006 was also filed for the relief within the period of the Limitation in Article 58 of Part III of First Division to the Limitation Act,1963 for declaratory relief.

174. During the pendency of C.S.No.555 of 2006 filed on 06.07.2006 by the claimants (respondents 1 to 3 herein), the claimants (respondents 1 to 3 herein) filed O.P.No.15 of 2011 on **07.12.2007**. Though in the Impugned Award O.P.No.15 of 2011 is stated to have been filed on 15.02.2010 after Ex.R99 order dated 28.08.2009 in A.No.2103 of 2008 to reject R-10 plaint in C.S.No.555 of 2006, it is noticed that O.P.No.15 of 2011 was filed on 07.12.2007 after issuance of Ex.R-6 Notice dated 13.11.2004.

175. This is evident from Ex.R-128 Court Notice dated **15.02.2011** (wrongly typed as 15.02.2010) which has been filed at Page No.491 of Volume-III of the Typed Set of Documents filed by the petitioner. Image of Ex.R-128 Notice dated 15.02.2010 (which should be actually on 15.02.2011) is extracted below:-

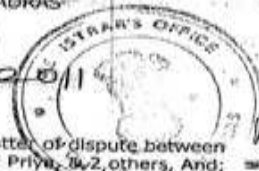


O.P.No.1068 of 2019

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS
ORDINARY ORIGINAL JURISDICTION

O.P. No. 15 of 2011



In the matter of dispute between
Dr. Geetha Hari Priya & 2 others, And;
N. Syamala Devi & A/R, And;
In the matter of Partnership Deed dated 10.5.1993.

Dr. Geetha Hari Priya @ Geetha Gopalaswamy & 2 others.

Vs.

N. Syamala Devi & Ors.

Partners.

Respondents.

To

N. Syamala Devi, W/o, N. Raghavulu Naidu,
Plot-Q No. 215, New No. 48
MMDA Colony, Arumbakkam,
Chennai - 600 106.

1st Respondent.

The respondent above named,

Whereas the petitioner above named has on the 7th day of December 2007 made an application which has been numbered and registered as O.P. No. 15 of 2011 for an order that the arbitration agreement, dated the 10.5.93 and entered into between the petitioner and you the respondent be filed, you are hereby required under Sec.11(4)(a)&(5) of the Arbitration Act, 1996, being served with this notice, to appear before the Court on the day of 18th Feb 2011 at 10.30 a.m. to show cause why the said agreement should not be filed.

Dated at Chennai on this the 15th day of Feb, 2010.

[Signature]
COCB
1/2/2011
-Registrar

[Signature]
Counsel For Petitioner

176. Thus, O.P.No.15 of 2011 was filed beyond the period of limitation in terms of Article 137 of Part II to Third Division to the Limitation Act, 1963. A counter was also filed by the petitioner disputing the maintainability of



O.P.No.1068 of 2019

O.P.No.15 of 2011 in Ex.R-128 dated 15.02.2011 (the said date should be read as 15.02.2010).

177. In the counter filed by the petitioner, the petitioner has raised objections regarding the maintainability of O.P.No.15 of 2011 on the ground that Ex.R-10 plaint in C.S.No.555 of 2006 that was filed on 06.07.2006 was rejected vide Ex.R-99 Order dated 28.08.2009 in A.No.2103 of 2008.

178. However, the petitioner failed to appear before the Hon'ble the Chief Justice on 05.09.2014 when O.P.No.15 of 2011 was taken up for hearing. Therefore, in the absence of the Counsel for the petitioner and in the presence of the counsel for the 4th respondent herein (2nd respondent in Arbitral proceedings), the Hon'ble Chief Justice appointed Hon'ble Mr.Justice D.Raju (Rtd.,) former Judge of the Hon'ble Supreme Court as the Sole Arbitrator to enter upon reference.

179. Later, the aforesaid order was modified on 23.01.2015 by the Hon'ble the Chief Justice. Thus, Hon'ble Mr.Justice N.V.Balasubramanian (Rtd.,) a former Judge of Madras High Court (since deceased during the pendency of this Original Petition) was appointed as the Sole Arbitrator.



WEB COPY

180. After the aforesaid order dated 23.12.2015 was passed appointing Hon'ble Mr.Justice N.V.Balasubramanian (Rtd.,) as the Arbitrator, the petitioner had filed A.No.435 of 2015 in O.P.No.15 of 2011 to review orders dated 08.09.2014 and 23.01.2015.

181. By an order dated 30.10.2015, A.No.435 of 2015 filed by the petitioner to review the aforesaid orders in O.P.No.15 of 2011 were dismissed holding that there was no impediment for the learned Arbitrator to proceed further and decide the *inter se* dispute between the parties on merits. Relevant portion of the order dated 30.10.2015 in A.No.435 of 2015 reads as under:-

“5. A request for adjournment is again made today on the ground that the Senior Counsel is on the legs before the Hon'ble Supreme Court.

6. Once the counsel on record is available in Court, whether the Senior Counsel's condescends to appearance in the matter or not, that may be his privilege, but the Court cannot wait for the appearance of the Senior Counsel, especially, when opportunity was granted to examine the matter in issue and thereafter, it was again adjourned for today. I am, thus, not inclined to adjourn the proceedings.

7. In my view, really, the only aspect urged as was set out in paragraph 3 of the order dated 11.09.2015, stands covered against the applicant.

8. In view aforesaid, there appears to be no impediment in the arbitration proceeding for deciding the merits of the disputes.



O.P.No.1068 of 2019

inter se the parties.

WEB COPY

9. *The application is, thus, dismissed. No costs.*”

182. The learned Arbitrator has concluded that the respondents 1 to 3 (claimants before him) were entitled for benefit of exclusion under Section 14 of the Limitation Act, 1963 between **06.07.2006** being the date of institution of C.S.No.555 of 2006 and passing of Ex.R-99 Order dated **28.08.2009** in A.No.2103 of 2008 rejecting Ex.R-10 plaint in C.S.No.555 of 2006. However, the learned Arbitrator failed to note that the cause of action for the status of the subject land arose as early as 2004 in Ex.R-6, dated 13.11.2004.

183. The arbitration proceedings is deemed to have been commenced on 24.11.2004 when Ex.R-7 Reply was given by the petitioner in response to Ex.R6 Legal Notice dated 13.11.2004 in terms of Section 21 of the Arbitration and Conciliation Act, 1996.

184. However, it should be noted that there was no prior notice for dissolving the partnership firm in Ex.R-6 Legal Notice dated 13.11.2004, which was responded by the petitioner vide Ex.R-7 Reply dated 24.11.2004.



WEB COPY

185. An Arbitrator should have been appointed within a period of three years from the date of Ex.R-7 Reply dated **24.11.2004** of the petitioner in response to Ex.R-6 Legal Notice 13.11.2004 of the 3rd respondent/petitioner on 24.11.2007 in terms of Article 137 of the Limitation Act, 1963.

186. Thus, the arbitration proceeding is deemed to have commenced on 24.11.2004 for declaration that the said land was that of the Partnership Firm in terms of Ex.R-51 Unregistered Partnership Deed dated **10.05.1993**.

187. At that stage, the respondents 1 to 3/claimants had two options. Either to file a petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator on or before **23.11.2007** or file a suit for the remedy.

188. The respondents 1 to 3/claimants instead chose the option to file Ex.R-10 Complaint in C.S.No.555 of 2006 on **06.07.2006**. C.S.No.555 of 2006 was filed on **06.07.2006** that was well within the period of limitation from Ex.R-7 Reply dated **24.11.2004**, as the limitation for a suit for declaration under Article



O.P.No.1068 of 2019

58 Part-II of the First Division of the Limitation Act, 1963, would have expired only on **23.11.2007**.

189. The respondents 1 to 3/claimants failed to exercise the option to approach this Court under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator on or before **23.11.2007**. However, the respondents/claimants filed O.P.No.15 of 2011 on **07.12.2007** as is evident from Ex.R-128 Notice dated 15.02.2010 [actually 15.02.2011] of this Court issued to the petitioner giving notice of hearing of O.P.No.15 of 2011 as **18.02.2011**.

190. C.S.No.555 of 2006 that was filed by the respondents 1 to 3/claimants on 06.07.2006 for declaration that the land that was sold to the petitioner vide Ex.R-56 Sale Deed dated **15.07.1994** was that of the Partnership Firm vide Ex.R-51 Unregistered Partnership Deed dated **10.05.1993**, presupposes existence of a dispute regarding the ownership of the land.

191. Since the cause of action for a right to declare that the subject property was that of the Partnership Firm in Ex.R-51 Unregistered Partnership Deed dated **10.05.1993** is to be traced to Ex.R-6 Legal Notice **13.11.2004** and its reply vide Ex.R-7 Reply dated **24.11.2004**, it has to be construed that the



O.P.No.1068 of 2019

Arbitration Proceedings insofar as declaration of the title to the property commenced on **24.11.2004** in view of Section 21 of the Arbitration and Conciliation Act, 1996 and the limitation expired on **23.11.2007**.

192. The following Table demonstrates the position as far as limitation is concerned:-

Ex.R6 dated 13.11.2004	Notice issued u/s. 11 of Arbitration and Conciliation Act, 1996	Ex.R7 dated 24.11.2004	Reply to Ex.R6 dated 13.11.2004
Limitation expires on 23.11.2007 in view of Article 137 of Part II to Third Division to the Limitation Act, 1963 read with Section 21 of the Arbitration and Conciliation Act, 1996			
Two options			
Suit		O.P.	
Ex.R10	C.S.No.555 of 2006 filed on <u>06.07.2007</u> [In Time]	Ex.R128, dated 15.02.2010 *	O.P.No.15 of 2011 filed on 07.12.2007
Ex.R99	Order passed in A.No.2103 of 2008 on 28.08.2009 rejecting the plaint in C.S.No.555 of 2006 under Order VII Rule 11 of CPC	Thus, O.P.No.15 of 2011 filed on 07.12.2007 was barred by limitation.	
Ex.C28 / Ex.R101	2 nd Notice dated 18.11.2009 issued under Section 11 of the Arbitration and Conciliation Act, 1996		

[* Actually, the date of numbering the O.P. would have



O.P.No.1068 of 2019

been 15.02.2011 as O.P.No.15 of 2011 could not be numbered in 2010 on 15.02.2010]

WEB COPY

193. In the impugned Award dated **18.03.2019**, the learned Arbitrator has however excluded the time between **06.07.2006** being the date of institution of Ex R-10 plaint in C.S.No.555 of 2006 and passing of order dated **28.08.2009** in Ex.R-99 and until Ex.C-28/Ex.R-101 was issued on **18.11.2009** for dissolution of the firm and for distribution of its assets.

194. Insofar as the dispute relating the ownership and declaration of ownership over the property is concerned, the arbitration proceeding is deemed to have commenced on **24.11.2004** when **Ex.R-7 Reply** dated **24.11.2004** was sent by the petitioner dated **24.11.2004** in response to **Ex.R6 Notice** dated **13.11.2004** of the respondents 1 to 3/claimants in terms of Section 21 of the Arbitration and Conciliation Act, 1996. The limitation expired on 23.11.2007.

195. Since the petitioner failed to come forward with a consent for appointment of an Arbitrator in terms of Clause 23 of Ex.R-51 Partnership Deed, the respondent ought to have approached this Court under Section 11 of the Arbitration and Conciliation Act, 1996 on or before **23.11.2007** in terms of the Article 137 in Part II of Third Division of the Limitation Act, 1963, as per



the position of law clarified by the Hon'ble Supreme Court in **BSNL Vs. Nortel Networks India Private Limited (India)**, (2021) 5 SCC 738.

196. The Hon'ble Supreme Court in **BSNL Vs. Nortel Networks India Private Limited (India)**, (2021) 5 SCC 738 held as under:-

*“Limitation is normally a mixed question of fact and law, and would lie within the domain of the Arbitral Tribunal. There is, however, a distinction between jurisdictional and admissibility issues. An issue of "Jurisdiction pertains to the power and authority of the Arbitrators to hear and decide a case. **Jurisdictional issues include objections to the competence of the Arbitrator or tribunal to hear a dispute, such as lack of consent, or a dispute falling outside the scope of the arbitration agreement.** Issues with respect to the existence, scope and validity of the arbitration agreement are invariably regarded as jurisdictional issues, since these issues pertain to the jurisdiction of the tribunal.”*

197. It further held that Admissibility issues however relate to procedural requirements, such as a breach of pre-arbitration requirements, for instance, a mandatory requirement for mediation before the commencement of arbitration,



O.P.No.1068 of 2019

or a challenge to a claim or a part of the claim being either time-barred, or prohibited, until some precondition has been fulfilled. Admissibility relates to the nature of the claim or the circumstances connected therewith.

198. An admissibility issue is not a challenge to the jurisdiction of the Arbitrator to decide the claim. The issue of limitation, in essence, goes to the maintainability or admissibility of the claim which is to be decided by the Arbitral Tribunal.

199. It further held that “For instance, a challenge that a claim is time-barred, or prohibited until some precondition is fulfilled, is a challenge to the admissibility of that claim, and not a challenge to the jurisdiction of the Arbitrator to decide the claim itself”.

200. It further held that the period of limitation for filling a petition seeking appointment of an Arbitrator(s) cannot be confused or conflated with the period of limitation applicable to the substantive claims made in the underlying commercial contract.

201. The period of limitation for such claims is prescribed under various



Articles of the Limitation Act, 1963. The limitation for deciding the underlying substantive disputes is necessarily distinct from that of filing an application for appointment of an Arbitrator.

202. It further observed that in view of the legislative mandate contained in the amended Section 11(6-A), the Court is now required only to examine the existence of the Arbitration Agreement. All other preliminary or threshold issues are left to be decided by the Arbitrator under Section 16, which enshrines the kompetenz-kompetenz principle.

203. It is further observed that the doctrine of kompetenz-kompetenz implies that the Arbitral Tribunal is empowered, and has the competence to rule on its own jurisdiction, including determination of all jurisdictional issues. This was intended to minimise judicial intervention at the pre-reference stage, so that the arbitral process is not thwarted at the threshold when a preliminary objection is raised by the parties.

204. It further observed that Section 11 does not prescribe any time period for filing an application under sub-section (6) for appointment of an Arbitrator. Since there is no provision in the 1996 Act specifying the period of



limitation for filing an application under Section 11, one would have to take recourse to the Limitation Act, 1963, as per Section 43 of the Arbitration Act, which provides that the Limitation Act shall apply to arbitrations, as it applies to proceedings in Court.

205. It is further observed that the provisions of the Limitation Act, 1963, will apply to all proceedings under the Arbitration and Conciliation Act, 1996, both in Court and in arbitration, except to the extent expressly excluded by the provisions of the Act. It observed since none of the Articles in the Schedule to the Limitation Act, 1953 provide a time period for filing an application for appointment of an Arbitrator under Section 11, **it would be covered by the residual Article 137 of the Limitation Act, 1963. The period of limitation for filing an application under Section 11 would be governed by Article 137 of the First Schedule of the Limitation Act, 1963.**

206. It further observed that under Article 137 of the Limitation Act, 1963, application for appointment of an Arbitrator under Section 11(6) or Section 11(9) of the Arbitration Act before the High Court or the Supreme Court would apply from the date when a notice invoking an arbitration agreement is received by other side and other side refuses to the name suggested by the



opponent or refusing to suggest any other name in accordance with the provisions of Section 11 or the agreed procedure prescribed in the arbitration agreement within the time contemplated therein or specifically refuses to appoint any Arbitrator in the event of such other party being an appointing authority.

207. It is further observed that the limitation for filing an application under Section 11 would arise upon the failure to make the appointment of the Arbitrator within a period of 30 days from issuance of the notice invoking arbitration.

208. It thus observed that “In other words, an application under Section 11 can be filed only after a notice of arbitration in respect of the particular claim(s)/dispute(s) to be referred to arbitration as contemplated by Section 21 of the Arbitration and Conciliation Act, 1996 is made, and there is failure to make the appointment. The period of limitation will begin to run from the date when there is failure to appoint the Arbitrator”.

209. In the above case, the Hon’ble Supreme Court also referred to its earlier decision in **Sriram Mills Limited Vs. Utility Premises Private Limited**,



O.P.No.1068 of 2019

2007 4 SCC 599 and its decision rendered in **S.S.Rathore Vs. State of M.P.**,

(1989) 4 SCC 582 : 1990 SCC (L&S) 50; **Union of India Vs. Har Dayal**,

(2010) 1 SCC 394; **CLP (India) (P) Ltd. Vs. Gujarat Urja Vikas Nigam**

Ltd., (2020) 5 SCC 185.

210. Therefore, as far as declaratory relief is concerned, the limitation had expired long before on **23.11.2007** *i.e.*, after **Ex.R-6 Notice** dated **13.11.2004** was replied by the petitioner vide **Ex.R-7 Reply** dated **24.11.2004**. The limitation could not have been either revived by filing of **O.P.No.15 of 2011** on **17.12.2007** as it was expired on **23.11.2007** or revived after **Ex.R-99 Order** dated **28.08.2009** in A.No.2103 of 2008 in C.S.No.555 of 2006 was passed by issuing **Ex.C-28/Ex.R-101** dated **18.11.2009**.

211. The presentation of O.P.No.15 of 2011 on **07.12.2007** was thus beyond the period of limitation under Article 137 of the Limitation Act, 1963. O.P.No.15 of 2011 which was filed on **07.12.2007** was perhaps not pursued, as C.S.No.555 of 2006 which was filed earlier on **06.07.2006** was being pursued by the respondents 1 to 3 before this Court. Thus, it cannot be said that C.S.No.555 of 2006 was prosecuted in good faith. Ex.R-99 Order in A.No.2103 of 2008 in C.S.No.555 of 2006, which was passed rejecting the plaint on



O.P.No.1068 of 2019

28.08.2009 will not revive O.P.No.15 of 2015 *qua* the cause of action that accrued on Ex.R-7 Reply dated **24.11.2004**. O.P.No.15 of 2011 was merely represented by the respondents/claimants incorporating the details of Ex.R-99 Order dated 28.08.2009 in A.No.2103 of 2008. O.P.No.15 of 2011 was not filed on **15.02.2010** as has been stated by the respondents/claimants or in Ex.R-128, dated **15.02.2011**.

212. As mentioned above, the attempt of the respondents/claimants as also the other Trustees under Ex.R-65 Trust Deed dated 25.04.1996 was to wrest land from the control of the petitioner in which Maruthi Vidyalaya was started way back on 16.06.1978 and closed on 19.11.2010.

213. The concerted effort of the respondents herein (the claimants as also the 2nd respondent before the Arbitral Tribunal) as also the other Trustees under Ex.R-65 Trust Deed dated 25.04.1996, right from the year 2006 with the filing of C.S.No.555 of 2006 on 06.07.2006 and various writ petitions mentioned above was only to wrest land from the control of the petitioner which was allotted vide Ex.R-46 Allotment Letter dated 18.10.1984 to the petitioner and in respect of limitation Ex.R-56 Sale Deed dated 15.07.1994 was registered.



O.P.No.1068 of 2019

214. Therefore, the arbitration proceedings was not a continuation of the dispute in C.S.No.555 of 2006 filed on 06.07.2006 which was rejected on 28.08.2009 vide Ex.R-99 Order dated 28.08.2009 in A.No.2103 of 2008 in C.S.No.555 of 2006.

215. After Ex.R-99 Order dated 28.08.2009 was passed in A.No.2103 of 2008 in C.S.No.555 of 2006 rejecting the plaint under Order VII Rule 11 of CPC, all the respondents herein merely issued Ex.R-101 Legal Notice 18.11.2009 under Section 21 of the Arbitration and Conciliation Act, 1996 for dissolution of the Firm M/s.Maruthi & Co. and for the land which was allotted to the petitioner vide by the Tamil Nadu Housing Board (TNHB) vide Ex.R-46 Allotment Letter dated 18.10.1984 and in respect of which Ex.R-56 Sale Deed dated 13.07.1994 was executed by the Tamil Nadu Housing Board (TNHB) in favour of the petitioner which was treated as a contribution of the petitioner and as an asset of the partnership under Ex.R-51 Unregistered Partnership Deed dated 10.05.1993.

216. In my view. the learned Arbitrator has wrongly applied Section 14 of the Limitation Act, 1963 to the facts of the case and has excluded the time



O.P.No.1068 of 2019

between **06.07.2006** (*i.e.*, institution of the suit in Ex.R-10 plaint) and issuance of Ex.C-28/Ex.R-101 Legal Notice dated **18.11.2009** after Ex.R-99 Order dated **28.08.2009** was passed in A.No.2103 of 2008 in C.S.No.555 of 2006 rejecting the plaint under Order VII Rule 11 of CPC.

217. Mere issuance of **Ex.C-28/Ex.R-101** Legal Notice dated **18.11.2009** could not have revived the limitation as far as the declaratory relief covered by C.S.No.555 of 2006 as C.S.No.555 of 2006 was not prosecuted with due diligence and good faith after O.P.No.15 of 2011 was filed on **07.12.2006**. Filing of O.P.No.15 of 2011 on **07.12.2006** by the respondents 1 to 3/claimants was suppressed when O.P.No.15 of 2011 was eventually numbered and taken up for hearing before the Hon'ble The Chief Justice for hearing.

218. Although the order passed by the Hon'ble The Chief Justice under Section 11 of the Arbitration and Conciliation Act, 1996 as it stood prior to its amendments in 2015, is a judicial order, the fact remains that the Hon'ble The Chief Justice while dismissing the application for review of its order passed in O.P.No.15 of 2011 on 30.10.2015 in A.No.435 of 2015 held that there was no



O.P.No.1068 of 2019

impediment for the Arbitral Tribunal to decide the *inter se* dispute on merits.

The issue on limitation is also a substantial issue on merits which goes to the root of arbitrability of the dispute.

219. Thus, after Ex.R-99 Order dated 28.08.2009 was passed in A.No.2103 of 2008 in C.S.No.555 of 2006, O.P.No.15 of 2011 that was filed earlier on 07.12.2007 was revived issuing Ex.C-28/Ex.R-101 Legal Notice dated 18.11.2009.

220. Correct remedy for the claimants (respondents herein) was to file a fresh petition under Section 11 of the Arbitration and Conciliation Act, 1996. However, O.P.No.15 of 2011 which was itself time barred in view of Article 137 of part II of Limitation Act 1963 as the limitation had expired long back on 23.11.2007, was revived without reference to limitation.

221. Therefore, exclusion of time between filing of suit in C.S.No.555 of 2006 on **06.07.2006** and passing of Ex.R-99 Order dated **28.08.2009** in A.No.2103 of 2008 is of no consequence as far as the declaratory relief is concerned. Once C.S.No.555 of 2006 was filed on **06.07.2006**, after the arbitral proceeding commenced on **24.11.2004** vide Ex.R-7 Reply dated



O.P.No.1068 of 2019

24.11.2004 after Ex.R-6 Notice dated **13.11.2004** was received by the petitioner, the arbitral proceeding is deemed to have been abandoned. In any event, the limitation for the cause of action which commenced in Ex.R-6 Notice dated **13.11.2004** after Ex.R-7 Reply dated **24.11.2004** was sent by the petitioner expired on 23.11.2007 and will not get revived or continued merely because of Ex.R-99 Order dated **28.08.2009** in A.No.2103 of 2008 in C.S.No.555 of 2006 came to be passed by wrongly applying Section 14 of the Limitation Act, 1963 to the facts of the case.

222. It would have been different, if A.No.2103 of 2008 was filed by the petitioner under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the parties to Arbitration in view of clause 23 of Ex.R-51 Unregistered Partnership Deed dated 10.05.1993. In which case also, the Arbitral Tribunal ought to have decided whether the initiation of the Arbitration Proceeding was in time or could have been continued or rejected as time barred. In any event, the learned Arbitrator ought to have examined the limitation properly.

223. It cannot be said that C.S.No.555 of 2006 was prosecuted with due diligence after O.P.No.15 of 2011 was filed on **07.12.2007**. This is a vital aspect which ought to have been properly considered by the learned Arbitrator



before passing the Impugned Award on merits. Instead, the learned Arbitrator has given the benefit of exclusion of time under Section 14 of the Limitation Act, 1963 to the respondents 1 to 3/claimants.

224. Thus, O.P.No.15 of 2011 that was filed on **07.12.2007** could not have the limitation revived after Ex.R-99 Order dated 28.08.2009 came to be passed in A.No.2103 of 2008 in C.S.No.555 of 2006 whereby Ex.R-10 Plaint in C.S.No.555 of 2006 was rejected under Order VII Rule 7 of the Code of Civil Procedure, 1908.

225. Therefore, the impugned Award insofar as declaratory relief is concerned is held to be time barred as O.P.No.15 of 2011 was filed on **07.12.2007** after the limitation expired on **24.11.2007**.

226. As far as arbitrability of dispute relating to the declaratory relief that the land that was allotted to the petitioner in 1984 vide Ex.R-46 dated 18.10.1984 in respect of Ex.R-56 Sale Deed executed on 15.07.1994 is concerned, it could not have been agitated in O.P.No.15 of 2011, as limitation expired on **23.11.2007**, as O.P.No.15 of 2011 was filed only on 07.12.2007 beyond the period of limitation by applying the ratio in **BSNL Vs. Nortel**



O.P.No.1068 of 2019

Networks India Private Limited (India) referred to supra.

WEB COPY

227. As far as fresh cause of action for dissolution of the partnership is concerned, it will be governed by a fresh period of limitation from the date of Ex.C-28/Ex.R-101 Legal Notice dated 18.11.2009 and its Reply vide Ex.R-102 dated 02.12.2009 in view of Section 21 of the Arbitration and Conciliation Act, 1996. I see no point in setting aside the Award insofar as the relief granted for dissolution of Partnership concern, though the respondents/claimants were well within the rights to ask for dissolution of the partnership firm in 2004 itself. However, they are not entitled to claim any right over the land that was allotted to the petitioner vide Ex.R-46 Allotment Letter dated 18.10.1984 in respect of which the Tamil Nadu Housing Board (TNHB) had executed Ex.R-56 Sale Deed dated 15.07.1994 in the light of limitation.

228. The Impugned Award suffers from patent illegality as this aspect of limitation was not properly considered by the learned Arbitrator. The learned Arbitrator failed to note that though a composite relief was sought for in the arbitral proceedings, part of the relief was time barred in view of limitation prescribed under the Limitation Act, 1963, as made applicable to the arbitral proceeding under the Arbitration and Conciliation Act, 1996 in the light of the



O.P.No.1068 of 2019

decision of the Hon'ble Supreme Court in **Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (NHAI)**, (2019) 15 SCC 131.

229. Consequently, it has to be concluded that the Impugned Award insofar as it holds that property at Plot No.100-A, Q Block, M.M.D.A Colony, Arumbakkam, Chennai – 600 106, as without jurisdiction and beyond limitation, as the limitation had expired long before on **23.11.2007**, which was to be reckoned from Ex.R-7 Reply dated **24.11.2004** after the arbitral proceeding commenced on 24.11.2007 with issuance of Ex.R-7 Reply dated 24.11.2004 in response to Ex.R-6 Notice dated 13.11.2004.

230. Therefore, the Impugned Award giving a right to the claimants to buy the same is held without jurisdiction as the Arbitral Tribunal had passed the impugned Award without considering the substantial issue of limitation. The impugned Award is held contrary to public policy as this vital aspect has not been considered by the learned Arbitrator before passing the impugned Award.



O.P.No.1068 of 2019

231. In the result, the Impugned Award is partly set aside to the extent that it holds subject property viz., Plot No.100-A, Q Block, M.M.D.A Colony, Arumbakkam, Chennai – 600 106, measuring an extent of 7 grounds and 800 sq.ft., as that of the partnership firm viz., M/s.Maruthi & Co. and that the building put up on the land was that of the partnership firm. Similarly, the additional issues answered in favour of the respondents are set aside in the light of the decision of the Hon'ble Supreme Court in Ssangyong Engineering case (cited supra). Rest of the portion of the impugned Award insofar as profit are concerned, they are upheld.

232. In the result, the Impugned Award dated 18.03.2019 is partly set aside and partly upheld in terms of the above observations. This Original Petition is, thus, disposed of. No costs. Connected Application is closed.

05.06.2024



O.P.No.1068 of 2019

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

kkd/arb



WEB COPY



O.P.No.1068 of 2019

C.SARAVANAN, J.

kcd/arb/smn2

Pre-Delivery Order made in
O.P.No.1068 of 2019
and
A.No.9777 of 2019

05.06.2024