



Arb.O.P. (Com.Div.) No.364 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.364 of 2023

1.M.Ezhilarasan

2.Pravin Casmir

... Petitioners

Vs.

1.Thiruppathi Rajan

2.Munivel

3.Gollashivashanker

... Respondents

Prayer : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to grant an order appointing a Sole Arbitrator for resolution of the dispute between the petitioners and respondents under the C1.18 Arbitration in Partnership Deed dated 15.02.2018 to conduct the arbitration proceedings.

For Petitioners : Mr.K.S.Elangovan

For Respondents : No Appearance for R1

: Mr.J.Pradeep for R2



ORDER

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The petitioners herein had earlier filed this Arb.O.P.(Com.Div)No.619 of 2022 based on partnership deed dated 15.02.2018. Since the arbitration proceedings was initiated without proper notice under Section 21 of the Arbitration and Conciliation Act, 1996, the petitioners withdrew the same. Recording the request, the Arbitration Original Petition was withdrawn on 16.03.2023.

2. While withdrawing the Arbitration Original petition, the petitioners sought leave of this Court to file a fresh Arbitration Original Petition for appointing an Arbitrator in terms of the aforesaid agreement. After withdrawing Arb.O.P.(Com.Div)No.619 of 2022 on 16.03.2023, the petitioners have now filed this Original Petition seeking for appointment of the arbitrator in terms of the aforesaid deed of partnership dated 15.02.2018.

3. In this Original petition, the first and third respondents have remained ex-parte, despite notice being served. The second respondent appears before this Court through a counsel. The second respondent has also raised serious objection with regard to



maintainability of this Arbitration Original Petition on the ground that the second respondent was a partner under the deed of partnership dated 15.02.2018 but was removed from the partnership and a deed of reconstitution of the partnership was executed on 01.04.2021 without the second respondent.

4. It is therefore submitted that the dispute between the petitioners and second respondent cannot be a subject matter of an arbitration, in view of the reconstitution deed dated 01.04.2021 between rest of the partners who were the partners along with the second respondent in partnership agreement dated 15.02.2018.

5. That apart, it is submitted that without leave of this Court while withdrawing Arb.O.P.(Com.Div)No.619 of 2022, the question of filing the present Original Petition for the same relief cannot be ordered.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the second respondent.



7. Although there was a failure on the part of the petitioners while withdrawing Arb.O.P.(Com.Div)No.619 of 2022 to file the present Original Petition, whether the dispute between the petitioners and the rest of the partners i.e, respondents herein including the second respondent is arbitrable or not can be determined by the Arbitral Tribunal, as the dispute is otherwise arbitrable in terms of deed of partnership dated 15.02.2018. Relevant clause for resolving the dispute through Arbitration reads as under:-

“Clause 18

In case of dispute between the partners with regard to the partnership agreement or any matter relating to the firm it shall be decided by an arbitrator mutually agreed upon by the partners and in this regard the provisions of the Indian Arbitration and Conciliation Act, 1996 as prevailing then, shall apply.”

8. It is always open for the second respondent to contest the maintainability of the arbitration proceedings before the learned Arbitrator by raising all objections regarding arbitrability of the dispute between the petitioners and the second respondent, in view of deed of reconstitution of the partnership deed dated 01.04.2021.



9. In view of the above, Court is inclined to appoint

Mr.V.Vijay Shankar, Advocate as an Arbitrator to resolve the dispute between the parties. It is open for the second respondent to file appropriate application under Section 16 of the Arbitration and Conciliation Act, 1996 for the learned Arbitrator to decide whether the dispute between the parties or not. In view of the deed of reconstitution of the partnership deed dated 01.04.21, wherein, the name of the second respondent appears to have deleted from the partnership firm.

10. Considering the above, Court is inclined to pass the following order:-

(i) **Mr.V.Vijay Shankar, Advocate residing at New No.36, Old No.14, Mahatma Gandhi Road, Shastri Nagar, Chennai – 600 041 (Mobile No.9444001404)**, is appointed as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

(ii) The learned Arbitrator appointed herein, shall after issuing



notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

(iii) The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remains *ex parte*, the petitioners shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

11. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.



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12. Since this Court has appointed the Arbitrator, it is open to the petitioners as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

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Index : Yes / No
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Neutral Citation : Yes / No

C.SARAVANAN, J.



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