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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17-09-2025

DATE OF DECISION : 19-09-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P(COM.DIV.) No. 353 of 2024

Dr.Jayaprakash Narayanan
S/o. Dr.M.Karuppaiah
Managing Partner of M/s. Frontline
Hospitals and Research Institute
residing at No.C2 Rohini Garden
Enclave, Pattabiraman Street, Tennur
Trichy 620 017

Petitioner

Vs

1. M/s Frontline Hospital and Research
Institute
No.37 and 39 Chinthamani
Bazaar Road, Trichy
2. Dr.S.Radhakrishnan
S/o. A.K.Sarangapani
Jangamarajapuram Anbil Post
Lalgudi Taluk, Trichy 621 702



Arb O.P(COM.DIV.) No. 3
of 2024



3.Dr.S.Vel Aravind
S/o. M.Subramanian
Sakthi Nagar, Koppampatty Post,
Thuraiyur Taluk,
Trichy 621 012

Respondents

PRAYER

To appoint a Sole Arbitrator to decide the disputes and differences between the petitioner and the respondents in terms of the reconstitution of the partnership deed dated 01.04.2013.

For Petitioner : Mr.P.V.Balasubramaniam
Senior Counsel for
Mr.G.Abraham Prabhu

For Respondents : Mr.Anirudh Krishnan for
Mr.Sriram Venkatavaradan for
R1 and R2
Mr.A.M.Packianathan Easter
for M/s Easter Legal for R3

ORDER

This petition has been filed under Section 11(4) & (6) of the Arbitration and Conciliation Act, 1996 (for brevity, hereinafter referred to as “the Act”) for appointment of a sole Arbitrator to decide the disputes and differences between the petitioner and the respondents, in terms of reconstitution of the partnership deed dated 01.04.2013.

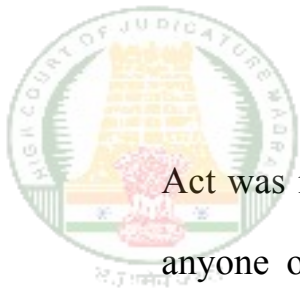


2. The case of the petitioner is that the first respondent is a partnership firm and the petitioner along with second and third respondents are the partners of the said firm. The firm was reconstituted on 01.04.2013, wherein the petitioner was inducted as partner to carry on the profession of running multi speciality hospital.

3. During the year 2016, certain disputes had arisen among the partners. Subsequent to the same, the petitioner filed Arb.O.P.No.1 of 2017 before the Principal District and Sessions Judge, Tiruchirappalli under Section 9 of the Act seeking for certain interim reliefs to protect the interest of the firm as well as the shares of the respective partners. This case ultimately ended before the Apex Court with an observation that the parties are at liberty to raise any objection before the trial Court where the matter was remanded back.

4. The petitioner approached this Court and filed O.P.No.55 of 2019 under Section 11(6) of the Act to appoint an Arbitrator to try the disputes pending among the partners. During the pendency of this petition, attempts were made to reconcile the matter amicably and hence, the petitioner did not prosecute O.P.No.55 of 2019, which was dismissed for default on 18.11.2020.

5. The parties were not able to come to any settlement and the dispute between the parties continued. Hence, the trigger notice under Section 21 of the



Act was issued on 15.06.2024 to the second and third respondents to nominate anyone of the retired Judges as an Arbitrator to try the disputes among the petitioner and the respondents. Even though the notice was received, no steps were taken on the side of the respondents. It is under these circumstances, the present petition came to be filed before this Court.

6. The first and second respondents have filed a counter affidavit. They have taken a stand that the present petition is not maintainable, since the dispute pertains to the year 2016 and the notice of arbitration was issued on 19.11.2016 and the earlier petition filed by the petitioner, came to be dismissed for default and therefore, for the very same cause of action, the second petition cannot be maintained and such a petition is also hit by the principles of res judicata. That apart, the present petition is also barred by limitation, since the time for filing the petition came to an end in December, 2019 and whereas the present petition has been filed only in the year 2024. Accordingly, the first and second respondents have sought for the dismissal of this petition. The third respondent, on receipt of the trigger notice dated 15.06.2024, issued a reply on 16.08.2024 and agreed for appointment of an Arbitrator to resolve the inter se disputes. The very same stand was also taken before this Court by the learned counsel for third respondent.

7. Heard the learned Senior Counsel appearing for the petitioner and the



respective learned counsel appearing on behalf of the first and second respondents as well as the third respondent.

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8. The learned Senior Counsel appearing on behalf of the petitioner submitted that the trigger notice dated 15.06.2024 was not issued for the very same cause of action and there were certain subsequent developments, wherein the other partners had colluded with each other to deprive the rights of the petitioner, who is also a partner and prevented the petitioner from enjoying the profit in the firm and the petitioner was also denied of the payment of any amount towards his share. In view of the same, the earlier trigger notice that was issued pursuant to which O.P.No.55 of 2019 was filed before this Court and which was dismissed for default on 18.11.2020, cannot be put against the petitioner.

9. The learned Senior Counsel for the petitioner also pointed out to the suit filed by the third respondent in O.S.No.193 of 2023 before the learned District Judge, Tiruchirappalli and submitted that a plain reading of the averments made in the plaint shows that there is a subsisting dispute between the partners and which can be resolved only by appointment of a sole Arbitrator as provided under the partnership reconstitution deed dated 01.04.2013.

10. The learned Senior Counsel submitted that this Court, while dealing



with a petition under Section 11 of the Act, can only look into the existence of a valid agreement in line with Section 7 of the Act and the other issues on merits cannot be gone into. All those grounds which have been raised on the side of the first and second respondents, are matters which have to be dealt with by the Arbitrator and it goes beyond the scope of enquiry under Section 11 of the Act.

11. Per contra, the learned counsel appearing on behalf of first and second respondents submitted that the petitioner has abandoned his claim, since the petitioner did not take any steps to restore the O.P.No.55 of 2019 and therefore the petitioner is barred from filing another Section 11 petition based on the same cause of action. The learned counsel further submitted that the principle of Order XXIII, Rule 1 of the CPC will also apply to a Section 11 petition and to substantiate the same, the learned counsel relied upon the judgment of the Apex Court in *HPCL Bio-Fuels Ltd v Shahaji Bhanudas Bhad*, reported in 2024 SCC OnLine SC 3190 and the judgment of the Delhi High Court in *Dewan Chand v. Chairman cum Managing Director and other*, reported in 2025 SCC OnLine Delhi 1872.

12. The learned counsel for first and second respondents further submitted that the trigger notice must clearly set out the particular dispute to be adjudicated. In the case on hand, the notice dated 15.06.2024 does not qualify the requirements of Section 21 and in the absence of a valid notice, the petition



under Section 11 is not maintainable. The learned counsel also submitted that if the notice dated 19.11.2016 is treated as the trigger notice under Section 21 of the Act, the present petition that has been filed in the year 2024 under Section 11 is clearly barred by limitation, as it has been filed beyond three years of the receipt of Section 21 notice. To substantiate this submission, the learned counsel relied upon the judgment of the Apex Court in *SBI General Insurance Co.Ltd v Krish Spinning*, reported in 2024 SCC OnLine SC 1754.

13. The learned counsel appearing on behalf of the third respondent submitted that there are subsisting disputes between the partners, which is evident from the pending suit filed by the third respondent in O.S.No.193 of 2023 seeking for the relief of declaration to declare that the firm is dissolved with effect from 30.04.2023 and for other consequential reliefs. Therefore, if all these disputes can be referred to Arbitrator to resolve the same, the third respondent has no objection in appointing an Arbitrator.

14. This Court carefully considered the submissions made on the side of the parties and the materials available on record.

15. At the outset, this Court made an attempt to resolve the dispute amicably by appointing the retired Judge of this Court as a Mediator. However, the Hon'ble Judge has submitted a report stating that the effort ended in failure.



16. It is not in dispute that the dispute between the partners had arisen in the year 2016 itself. On 20.10.2016, the second respondent had issued legal notice to the petitioner and the third respondent and they were clearly informed that both of them have been expelled from the firm with immediate effect under Section 33 of the Indian Partnership Act, 1932. They were also informed that the properties belonging to the firm and the profits accrued as per the books of accounts would be shared as per the ratio mentioned in the partnership agreement. In order to resolve the dispute, the second respondent also suggested the name of the retired District Judge, who can act as an Arbitrator.

17. The petitioner and the third respondent, on receipt of the notice from the second respondent, moved an application under Section 9 of the Act before the Principal District Judge, Tiruchirappalli seeking for the relief of injunction restraining the other partners from interfering with the day to day management of the firm and for other consequential reliefs. These applications came to be dismissed by an order dated 01.03.2017. Aggrieved by the same, C.M.A.(MD) Nos.521 to 523 of 2017 came to be filed before the Madurai Bench of Madras High Court. These appeals were allowed by an order dated 10.04.2018 and the matter was remanded back to the file of the learned Principal District Judge, Tiruchirappalli for fresh adjudication. The said order was put to challenge by the second respondent before the Apex Court and the SLP came to be dismissed on 16.05.2018. Even though the matter was remanded back to the District



Court, there was no further development.

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18. The petitioner issued a notice under Section 21 of the Act and moved this Court by filing O.P.No.55 of 2019 for appointment of an Arbitrator to resolve all the disputes that have arisen between the partners, as per the partnership reconstitution deed dated 01.04.2013. This petition was dismissed for non prosecution on 18.11.2020 and there is no dispute with regard to the fact that no steps were taken to restore this petition.

19. Thereafter, there was a limbo and the petitioner claims that some attempt was made to resolve the dispute between the parties and it failed.

20. It must be kept in mind that issuance of notice under Section 21 of the Act is the commencement of the arbitration proceedings with respect to a particular dispute and the cause of action arises when this notice is received by the other side. The cause of action when the earlier notice was issued by the petitioner, was the notice sent by the second respondent expelling the petitioner from the partnership firm. The petitioner was aggrieved by the same and the petitioner was also aggrieved by the fact that his share has not been given from the profits and income earned by the firm.

21. The dismissal of the earlier petition filed in O.P.No.55 of 2019 on



18.11.2020 and which was not restored by the petitioner, virtually tantamounts to abandoning the claim of the petitioner.

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22. The Apex Court in the case of *HPCL Bio-Fuels Ltd* (cited supra) dealt with the scope of applicability of Order XXIII, Rule 1 of the CPC to proceedings other than suits. In that case, the Apex Court, by applying the principles to applications under Section 11(6) of the Act, held that it will act as bar to those applications which are filed subsequent to the withdrawal of a previous Section 11(6) application filed on the basis of the same cause of action. The Apex Court also made it clear that if the cause of action for invoking the subsequent arbitration has arisen after the invocation of the first arbitration, then the application for appointment of Arbitrator cannot be rejected on the ground of multiplicity alone. On the facts of that case, the Apex Court held that the unconditional withdrawal of Section 11(6) petition amounts to abandoning not only the formal prayer for appointing an Arbitrator, but also the substantive prayer for commencing the actual arbitration proceedings. It amounts to abandoning the arbitration itself.

23. The above case arose out of the withdrawal of an application filed under Section 11(6) of the Act and in the present case, it involves the dismissal of an earlier petition for non prosecution, which was not restored thereafter. The effect is the same in both the scenarios.



24. It is also relevant to take note of the judgment of the Delhi High Court in *Dewan Chand case* (cited supra). The very same principle was applied by the Delhi High Court and it was held that where the earlier petition was withdrawn and no liberty was granted to the petitioner to file a petition afresh, the petitioner is barred from approaching the Court once again for the same cause of action.

25. The learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner has issued the subsequent notice under Section 21 of the Act with a fresh cause of action.

26. The above submission made by the learned Senior Counsel for the petitioner is unsustainable based on the materials that have been placed before this Court.

27. As stated supra, the third respondent has filed an independent suit in O.S.No.193 of 2023 against the petitioner and also the first and second respondents. In this suit, the petitioner has filed an application for rejection of plaint in I.A.No.3 of 2024 under Order VII, Rule 11(d) of the CPC. It will be relevant to extract the averments made in paragraphs 6 to 8 of the affidavit filed in support of the application, hereunder:-

“6) I submit that already this plaintiff had colluded with 1”



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defendant and had settle his issues amicably from him and then only he tried to withdraw his Arbitration Original Petition stated supra. That was not happen as per their wish and hence in order to prolong the issue and unnecessarily drag the legal proceedings, had colluded with 1^a defendant had played a drama before this Hon'ble Court by filing this suit and subsequent that this 1st defendant herein has filing an order 7 Rule 11 application, etc., The filing of suit is nothing but technical stunt. No purpose would be serving. The problem between the partners would not be solved completely. The property purchased by the parties in the suit only to build and run the Hospital. No separate deed of lease/rent deed/permission deed was executed by the parties in the suit to the Partnership firm i.e. Front line Hospital. (Partnership firm partners are also parties in the suit). The issues in the suit as well as in the Arbitration Original Petition states supra are one and the same. It is pertinent to mention that I approached the Hon'ble High Court by invoking sec. 11 of the Arbitration Act and the same was numbered as vide O.P.No.55 of 2019 and however the same was dismissed and at present I have taken steps to restore the same and the process is going on. This is the fact.

7) I submit that as per pleadings in the plaint, the plaintiff asks the relief of partition as per his plaint document No.16. i.e. sale deed document No.21/2014. Also in para 11 of the plaint- @page3 3rd line from bottom - the plaintiff himself admitted that the parties in the suit are managing partners of the M/s. Frontline Hospital and Research Institute and the properties are utilized by the owners of the property by running the Hospital and research institute and those factums are admitted by everyone and if it so, already there is existing dispute is in pending before this Hon'ble court vide



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Arbitration Original Petition.No.1/2017 as per the Arbitration clause of the Partnership deed and accordingly this suit claim also one among the issue and also one of the core issue of the Arbitration OP and in order to dilute the main Ar.O.P.No.1/2017 proceedings, by passing the procedure adopted under law, had technically pleaded the suit and this suit is comes under the purview of the Partnership Deed and hence this petitioner had already invoking Arbitration clause and filed Ar.O.P. and after prolonged interval of time (after lapse of 6 years) getting full benefits from the hospital business, now they colluded to filed this suit with technical aspects to swindle swollen the investment and profits of the petitioner/2d defendant and hence is specific bar under rule 11(d) order VII of CPC and accordingly the suit may be rejected under law.

8) It is pertinent to mention that, even the properties mentioned in the Arbitration Original Petition No.1 of 2017 and the suit properties mentioned in this suit i.e. O.S.No.194/2017 are one and the same. The disputes among the parties in both cases are one and the same. Already the Ar.O.P. is pending before this Hon'ble Court and subsequent suit shall not lie.”

28. It is quite clear from the above averments that the petitioner in categorical terms has stated that the issues in the suit as well as the petition filed by him in O.P.No.55 of 2019 are one and the same and that steps are being taken by the petitioner to restore the O.P.No.55 of 2019. This clearly shows that the petitioner had issued the earlier trigger notice and filed O.P.No.55 of 2019



with a grievance that he was expelled from the partnership firm by the second respondent and he was also seeking for his share in the properties and income.

The suit has been filed by the third respondent with a similar cause of action, where the third respondent has also narrated the earlier petitions filed by him along with the petitioner under Section 9 of the Act, which went upto the Apex Court.

29. These are undisputed and unimpeachable documents of sterling quality. This is more so, since such an affidavit was filed by the petitioner in a pending suit. After having taken such a specific stand before the civil Court, the petitioner is now attempting to project a case as if there was a subsequent cause of action. After the year 2016, the only cause of action which the petitioner had, was that he was expelled from the partnership firm and he was not paid his share in the profit and income. The petitioner is now trying to piggyback on the claim made by the third respondent by filing a suit and trying to project as if a new cause of action has arisen.

30. The so called new cause of action projected by the petitioner, as could be seen from the trigger notice dated 15.06.2024, is extracted hereunder:-

“In the above circumstances I find that all of you have jointly colluded each other to deprive my right as a partner and to prevent me from enjoying my profit in the firm and



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I have not derived any amount towards my share in the partnership firm till now. Hence I am left with no other option except to knock the doors of the Hon'ble High Court for seeking appointment of Arbitrator, as you have been prolonging the matter one way or other thereby filing application after application, suit after suit thereby dragging on the proceedings from the year 2017 onwards.”

31. The above claim made by the petitioner by projecting a new cause of action is only a facade to cover up the claim, which was already abandoned by the petitioner, pursuant to the dismissal of the petition filed in O.P.No.55 of 2019.

32. The notice issued under Section 21 of the Act has a sanctity to it under the Act, as it signifies the commencement of the proceedings in relation to a cause of action, like a plaint that is filed in a suit before the civil Court. Normally, before the issuance of notice under Section 21, a demand is made by one party and it is denied or repudiated by the other, which results in a trigger notice under Section 21 of the Act. On receipt of the notice issued under Section 21 of the Act, the receiving party either accepts or denies the claim and reference to an arbitration. If the reference is denied, a petition is filed under



Section 11 of the Act for appointment of an Arbitrator.

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33. In the case on hand, all of a sudden from nowhere, the petitioner issues the notice dated 15.06.2024. The notice is not even clear as to which particular dispute needs to be adjudicated by the Arbitrator. Therefore, the notice issued by the petitioner does not even qualify to be a notice under Section 21 of the Act.

34. It will be relevant to take note of the judgment of the Apex Court in *B and T AG v. Ministry of Defence, (2024) 5 SCC 358*. Paragraph 38 succinctly explains the sanctity of the notice that is issued under Section 21, which is extracted hereunder:-

“38. Three principles of law are discernible from the aforesaid decision in *Inder Singh Rekhi*⁵ of this Court. First, ordinarily on the completion of the work, the right to receive the payment begins. Secondly, a dispute arises when there is a claim on one side and its denial/repudiation by the other and thirdly, a person cannot postpone the accrual of cause of action by repeatedly writing letters or sending reminders. In other words, “bilateral discussions” for an indefinite period of time would not save the situation so far as the accrual of cause of action and the right to

⁵ *Inder Singh Rekhi v. DDA, (1988) 2 SCC 338*



apply for appointment of arbitrator is concerned.”

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35. Attention of this Court was also drawn to the judgment of the Apex Court in Civil Appeal Nos.5542-5543 of 2023 dated 13.12.2024 (Celir LLP v. Mr.Sumati Prasad Bafna and others), wherein the Apex Court has dealt with in detail the issue regarding the re-litigation and the principles of res judicata and also the abuse of process of law that takes place by way of piecemeal litigation by raising one issue after the other in installments at different points of time. The Apex Court held that such attempts cannot be allowed to exploit the procedural loopholes and it has to be nipped in the bud to give a quietus to the litigation and finality to judicial decisions. Even though the said case did not arise out of arbitration proceedings, the Apex Court applied the Henderson principle to hold that there should be an end to litigation and no party should be vexed twice in a litigation for one and the same cause of action. The above principle can be applied to the facts of the present case also. The petitioner, who was prosecuting the cause of action by way of issuing the trigger notice under Section 21 of the Act and had chosen to file the earlier petition before this Court for appointment of Arbitrator in O.P.No.55 of 2019, allowed the petition to be dismissed for non prosecution on 18.11.2020. The said petition was not restored and the petitioner once again wants to rake up the same cause of action, even though he claims that it is a different cause of action, after having abandoned the claim, and this Court cannot entertain repeated petitions under Section 11



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for the same cause of action.

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36. In the light of the above discussions, this petition stands dismissed.

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Index: Yes

Speaking order

Internet: Yes

Neutral Citation: Yes

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To

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