



Arb.O.P.(Comm.Div.) No.468 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
03.09.2024

PRONOUNCED ON
03.10.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU
Arb.O.P.(Comm.Div.) No.468 of 2023
And O.A.No.785 of 2023

1.M.Rajaratnam
2.M.Ragunathan

... Petitioners

-vs-

1.M/s.Raj Video Vision,
A Partnership firm,
No.32, Poes Road,
Teynampet, Chennai – 600 018.

2.M.Raajhendran (alias Rajendran),
3.M.Ravindran

... Respondents

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking to appoint a Sole Arbitrator and to refer the dispute between the petitioners and respondents 2 & 3 to Arbitration, in terms of the Arbitration Agreement between the parties and as provided under the provisions of the Arbitration and Conciliation Act, 1996 and pass such other or further order.

For Petitioners : Mr. Om Prakash
Senior Counsel
Assisted by Mr.R.Imayavaramban
for M/s.Ramalingam Associates



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: Mr.N.L.Rajah., Senior Counsel
for Mr.C.Ramesh for R2
: Mr.R.Sathish Kumar for R3

ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act') to appoint an Arbitrator to adjudicate upon disputes/differences between the Petitioners and the Respondents and direct the Respondents to pay the costs of this proceedings.

2. Heard Mr. Om Prakash, learned Senior Counsel assisted by Mr.R.Imayavaramban, learned counsel for M/s.Ramalingam Associates for the petitioners and Mr.N.L.Rajah, learned Senior Counsel for Mr.C.Ramesh, learned counsel appearing on behalf of the second respondent and Mr.R.Sathish Kumar, learned counsel appearing on behalf of the third respondent.

3. The learned counsel for the petitioner would submit that the first respondent is a partnership firm in which the petitioners and respondents 2 and 3 are partners. He would submit that originally, when the partnership was constituted, the 3rd respondent and the petitioners along with one another were partners. The said first respondent firm was reconstituted, wherein one



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of the partners namely Amudha R had exited from the partnership and the second respondent was taken in as a new partner. Since, certain disputes arisen between the parties namely the petitioners, respondents 2 and 3. The petitioners had issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996, on 11.04.2023, by making a retired Judge of this Court to act as an Arbitrator. But however, the second respondent had refused to arbitrate stating that the issue is non-arbitratable as it is an issue relating to infringement of copyright. Hence, he had approached this Court by filing an application seeking to appoint a sole Arbitrator to resolve the dispute between the parties.

4. Countering his arguments, Mr.N.L.Rajah, learned Senior Counsel for Mr.CRamesh, learned counsel appearing in behalf of the second respondent would contend that admittedly, the original Partnership Deed came into existence on 23.11.1995. The said partnership firm was reconstituted in the year 2018 where one Amudha.R, had retired from the partnership and the second respondent was added as a new partner to the said partnership firm. He would contend that the reconstituted partnership firm does not contain any Clause for Arbitration. He would heavily contend that when there is a change of partnership by an agreement and the said subsequent agreement does not contain Arbitration Clause, then the parties



cannot resort to initiate Arbitral proceedings of the dispute between the parties as there is no binding arbitration Clause in the squad supplemental partnership.

5. He would further contend that there is an issue that is sought to be raised is infringement of the copyright that the petitioners who were being exploited and therefore, the same could not be arbitrated and therefore, would seek this Court to dismiss the petition. He had also placed reliance on the judgment of the Hon'ble Apex Court in a judgment reported in **2023 (8) SCC 50** and contend that the Court should primarily enquire into the existence of a valid arbitration agreement and in this case, he would submit that there is no valid agreement with respect to the second respondent and therefore, the same could not be arbitrated.

6. Secondly, the issue of non-arbitrability of the dispute is concerned, the Court should also decide that there is no Arbitral issue to refer the matter for Arbitration. He would further reply upon the judgment of the Hon'ble Apex Court reported in **2024 7 SCC 174** that the arbitration Clause referred from another document should explicitly contain the arbitration Clause or atleast clearly indicate an intention to incorporate the arbitration Clause into the contract should be valid. In this present case, he would submit that there



is no reference particularly for Arbitration in the supplemental agreement.

Therefore, he would submit that the case could not be referred for Arbitration.

7. Mr.R.Sathish Kumar, learned counsel appearing in behalf of the third respondent would submit that he has not exploited any copyright through YouTube or other channels as alleged in the petition. He would also submit that whatever had been claimed is violation of infringement of copyright which cannot be arbitrable. Therefore, he would also submit that the argument of the learned Senior Counsel could not substantiate his case and prayed this Court to dismiss the petition.

8. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

9. The two fold objection in granting the relief is that under the reconstitution of the partnership deed in the year 2018. The parties have not accepted for referring the dispute to Arbitration. The two judgements of the Hon'ble Apex Court had been relied upon in support of their contentions. It cannot be disputed that the said dictum laid down by the Hon'ble Apex Court



in the above said judgements.

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10. However, in the facts of the present case, while this Court looks into the agreement dated 10.09.2018 which relates to the reconstitution of the partnership deed, it had been agreed between the parties to the contract under particular Clause (1) is that the new partner namely the second respondent herein would be replaced in the place of a retired in the basis of the same terms and condition that had contained in the deed of partnership in the year 1995. For better appreciation, the relevant Clause extracted hereunder

“1. The continuing Partners admit the New Partner as a Partner of the said Partnership in place of the Retiring Partner and on the basis of the same terms and conditions as are contained in the said Deed of Partnership hereinbefore recited as if the New Partner was a party to the said Deed Partnership in place or stead of the Retiring Partner except that the New partner will not be entitled to the benefits by way of profits earned during the period up to the date of these presents.”

11. That has been accepted to by the second respondent. When that being so, the second respondent cannot be heard to say that he is not bound



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by the Clause of the Arbitral agreement and any dispute arising out of the partnership firm cannot be arbitrated. Even though, the learned counsel appearing for the second and third respondent have contended that it is only a violation of an infringement of copyright which could not be arbitrated, the claim of the petitioners is that the copyright belonging to the partnership firm are being exploited by the second respondent for his benefit thereby denying the partnership firm, the income that has been derived out of such exploitation. This is not a simpliciter infringement of a copyright of the third party. Further, the reliance placed upon by the learned Senior Counsel appearing on behalf of the second respondent to the judgment of that Hon'ble Apex Court reported in 2023 8 SCC 50 with regard to non-arbitrability, in my view cannot be the correct proposition of law. The Hon'ble Apex Court in the aforesaid judgment had placed reliance upon the decision of the Hon'ble Apex Court reported in **2021 (2) SCC 1**, the aforesaid judgment in the subsequent judgment of the Hon'ble Apex Court had been held to be not the correct law.

12. In fact the learned Judge who was the author off the aforesaid judgment had himself in a subsequent Constitution Bench in the judgment of ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and stamp Act, 1899, In Re*** reported in **2024 (6)**



SCC 1 had expressed that his view in Vijay Dholia may not be the correct view. For better appreciation, the relevant paragraphs are extracted hereunder:-

“277. There are also two aspects of the judgment in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , which need to be noticed. First, I agree to and accept the error made by me in the judgment which observes that Section 11(6-A) of the Arbitration Act has ceased to be operative in view of the enforcement of Section 3 of the Arbitration and Conciliation (Amendment) Act, 2019. As rightly observed by Hon'ble the Chief Justice, Section 3 of the Arbitration and Conciliation (Amendment) Act, 2019 which relates to the amendment to Section 11 has not been enforced. Secondly, as has been noted in the judgment of Hon'ble the Chief Justice and in Career Institute Educational Society v.Om Shree Thakurji Educational Society [Career Institute Educational Society v. Om Shree Thakurji Educational Society, (2023) 16 SCC 458 : 2023 SCC OnLine SC 586] , the issue before this Court in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] was not the validity of an unstamped or under-stamped arbitration agreement. No specific opinion was expressed on this question. The reference to the validity of an unstamped arbitration agreement, as mentioned in Garware Wall Ropes Ltd.v.Coastal Marine Constructions



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Constructions & Engg. Ltd., (2019) 9 SCC 209 : (2019) 4 SCC (Civ) 324] , was only to serve the purpose of drawing a comparison between the “existence” and the “validity” of an arbitration agreement, and not a comment or opinion on the “existence” of unstamped or under-stamped arbitration agreements.

278.For the reasons set out in detail by Hon'ble the Chief Justice and recorded herein, I agree with the conclusions drawn, and referred to above. I also concur with the other findings and ratio in the judgment by Hon'ble the Chief Justice.”

13. For the foregoing reasons, I do not find any merits in the arguments made by the learned Senior Counsel appearing on behalf of the respondents.

14. In such view of the matter, this Court appoints **Mr.V.Bharathidasan, Former Judge of this Court**, residing at **No.22, (L-45), 2nd Main Road, Kamaraj Nagar, Thiruvannamipur, Chennai – 600 041**, as Sole Arbitrator to enter upon the dispute between the petitioner and the respondents.

15. The learned Sole Arbitrator is entitled to fix his fees as per the

Schedule-IV to the Act. This Court further requests the learned Sole



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Arbitrator to endeavour to decide the dispute as expeditiously as possible,
from the date of his entering into reference.

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16. Accordingly, this Arbitration Original Petition is ordered and the
O.A. is closed with liberty to the parties to invoke Section 17 of the
Arbitration and Conciliation Act, 1996 as required.

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Index : Yes/No
Speaking Order/Non Speaking Order
Gba

K.KUMARESH BABU, J.

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