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Arb.O.P.(Com.Div.) No.587 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.587 of 2023

M/s.MARS MINES

Partnership Firm,

Represented by its Partner

namely P.Gunasekaran,

No.5/17, Velachery Road,

Little Mount, Saidapet,

Chennai – 600 015.

... Petitioner

Vs.

1.A.Easkkiammal

2.Minor Jayalalitha Bharathi

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying for appointment of an arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the Partnership Deed dated 31.08.2009 at Chennai and to direct the respondents to pay the costs.

For Petitioner

: Mr.A.Thiyagarajan

Senior Counsel

for Mr.D.Senthil Kumar

For Respondents

: Mr.R.Balachandran

ORDER



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The petitioner has filed this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator.

2. This Original Petition is opposed by the respondents who are the wife and child of the deceased Partner Mr.S.R.Mohan, who died on 26.04.2021.

3. This Original Petition is primarily opposed on the ground that a forgery/fraud has been committed by the Partners of the Partnership Firm by making it seem as if the deceased husband of the first respondent who died on 26.04.2021, had given a consent for retiring from the Partnership Deed by filing Form-5 under the Indian Partnership Act, 1932 on 09.02.2023.

4. It is submitted that the first respondent became aware of the alleged forgery and therefore filed CrI.M.P.No.10527 of 2023 before the XI Metropolitan Magistrate at Saidapet, Chennai, pursuant to which, the complaint filed by the first respondent was forwarded under Section 156(3) of the Code of Criminal Procedure, 1973, to the Inspector of Police,



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Central Crime Branch, Chennai to investigate in accordance with the decision of the Hon'ble Supreme Court in **Lalita Kumari Vs. Government of Uttar Pradesh and others**, (2008) 7 SCC 164.

5. That apart, it is submitted that the first respondent's husband was a Partner under a Partnership Deed that was signed on 31.08.2009. It is further submitted that thereafter the Partnership Firm was reconstituted on several occasions and the last date of reconstitution of the Partnership Deed is dated 01.04.2016 and there is no clause for resolving the dispute under the aforesaid Reconstitution of the Partnership Deed. It is therefore submitted that on this account also, this Original Petition is liable to be dismissed.

6. That apart, it is submitted that this Original Petition has been filed only with a view to scuttle the criminal proceedings that have been initiated by the first respondent in CrI.M.P.No.10527 of 2023 before the XI Metropolitan Magistrate at Saidapet, Chennai.

7. The learned counsel for the respondents has referred to the



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decision of the Hon'ble Supreme Court in **Sushma Shivkumar Daga and another Vs. Madhurkumar Ramkrishnaji Bajaj and others**, 2023 SCC Online SC 1683.

8. A specific reference was made to Paragraph 28 wherein, referring to the previous decision of the Hon'ble Supreme Court in **Rashid Raza Vs. Sadaf Akhtar**, (2019) 8 SCC 710 and few other decisions of the Hon'ble Supreme Court referred in the context of serious fraud/bald allegation of fraud exists between the parties. The Hon'ble Supreme Court reiterated that the conditions laid down must be satisfied before the Court can refuse to refer the matter to the Arbitrator, a forum consciously decided by parties in an Agreement. The first is whether the plea permeates the entire contract and above all, the arbitration agreement, rendering it void or secondly, whether the allegation of fraud touches upon the internal affairs of the parties *inter se* having no implication in the public domain.

9. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned counsel for the respondents.



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10. The issue as to whether the dispute is arbitrable or not can be decided by the learned Arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996. *Prima facie*, the alleged fraud does not permeate in the execution of the Partnership Deed dated 31.08.2009 or any of the deeds reconstituting Partnership Firm.

11. The Deed of Reconstitution of Partnership Firm have merely continued the business by inducting the name of new partners in place of outgoing partners. *Prima facie*, Court is of the view, the dispute is arbitrable and therefore, there can be no impediment for appointing an Arbitrator.

12. The dispute relating to the alleged fraud committed by the partners of the Partnership Firm by forging the signature of Late Mr.S.R.Mohan in Form-5 is a separate subject matter in respect of which, the complaint of the first respondent has been taken on file and is under investigation that is to be dealt with separately. As far as the rights of the parties unfurling/emanating from the Partnership Firm is concerned, it can



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be decided by the learned Arbitrator.

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13. The petitioner has nominated a retired Judge of this High Court as the Sole Arbitrator. Since there is a opposition by the respondents, Court is inclined to appoint an Arbitrator to resolve the *inter se* dispute between the parties.

14. **Hon'ble Dr.Justice S.Vimala (Retd.), Former Judge of Madras High Court residing at Plot No.3, River View Avenue, 4th Main Road, Manapakkam, Chennai – 600 125, (Mobile No.94447 10101),** is appointed as the Arbitrator to enter upon reference to resolve/adjudicate the *inter se* dispute between the parties and pass a Final Award.

15. 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



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29A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

16. 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 remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

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

18. 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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19. All the issues relating to maintainability of the arbitration proceedings is permitted to be canvassed before the learned Arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.

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