



Arb.O.P.(Com.Div).No.343 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 18-03-2025

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

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M/s.Shri Senthil Marketing
A Partnership firm, Rep.by its Partners,
1. R.Rajendran,
2. J.R.Manimekalai,
Had office at R.K.Complex, 2nd Floor, No.209/15,
Second Agraharam, Salem 636 001

2. R.Rajendran
S/o.C.Rajagopal

3.J.R.Manimekalai
W/o.Rajendran,
both residing at Old No.2A, New No.9
Malli Street, Ponnammampet
Salem-636 001

..Petitioners

Vs

Kalaiselvi
W/o. Muthusamy,
Plot No.11, Ponni Nagar, Madhanandhapuram,
Chennai 600 125

.. Respondent

For Petitioners : M/s.S.Naveenha Devi

For Respondent: M/s.P.K.Harinath Babu



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Prayer: Petition filed under Section 34(2)(iii) of the Arbitration and Conciliation Act, 1996, praying (a) to set aside the Award dated 20.11.2023 passed by the Sole Arbitrator its entirety.

- b. Direct the respondent to pay the cost and
- c. Grant such further reliefs as this court may deem fit.

ORDER

This petition has been filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, challenging the impugned Arbitral Award dated 20.11.2023 passed by the Sole Arbitrator appointed by this Court under Section 11 of the Arbitration and Conciliation Act, 1996.

2. The petitioners have challenged the impugned Arbitral Award on the following grounds:-

- A]. The Award passed by the Arbitrator is patently illegal.
- B]. The Award has been passed against the petitioners in favour of the respondent without any evidence.
- C]. One of the partners of the petitioner firm who was responsible for the day to day conduct of the business of the partnership firm was suffering from serious medical ailment and was also hospitalised for a long period and due to



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the said fact, the petitioners did not participate in the Arbitration. The Arbitrator failed to take note of the said fact and has arbitrarily passed the impugned Arbitral Award after making the petitioners ex parte in the Arbitral proceedings.

3. The learned counsel for the petitioners would submit that the respondent voluntarily retired as a partner in the partnership firm through a retirement deed dated 04.03.2020. She would submit that in the retirement deed, no amounts was due and payable by the petitioner firm to the respondent. However, according to her, by total non-application of mind to the said fact, in the impugned Arbitral Award, the Arbitrator has observed that certain sums of money are due and payable by the petitioner firm to the respondent under the retirement deed dated 04.03.2020.

4. The learned counsel for the respondent reiterates the findings rendered by the Arbitrator under the impugned Arbitral Award and would submit that only in accordance with the evidence available on record before the Arbitrator, the impugned Arbitral Award came to be passed against the petitioner firm in favour of the respondent.



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5. The learned counsel for the respondent would submit that the petitioner firm having received notice in the arbitration, they should have appeared before the Arbitrator and submitted a reply. He would also submit that the legal notice sent by the respondent prior to the initiation of Arbitration was also not responded by the petitioners. Therefore, he would submit that the Arbitrator has rightly passed an Award in favour of the respondent as against the petitioners.

6. This Court has perused and examined the impugned Arbitral Award.

7. As rightly pointed by the learned counsel for the petitioners, the retirement deed dated 04.03.2020, through which, the respondent had retired from partnership firm, does not stipulate that the partnership firm has to pay any money to the respondent. However, by total non-application of mind to the said fact, the Arbitrator under the impugned Arbitral Award dated 20.11.2023 has given a finding that a sum of Rs.14,47,521/- is payable by the petitioners to the respondent. The retirement deed dated 04.03.2020 which has been placed



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on record before this Court, which is not disputed by the learned counsel for the respondent, which is also relied upon before the Arbitrator and was marked as Ex.C.2, does not stipulate that a sum of Rs.14,47,521/- is payable by the petitioner firm to the respondent pursuant to the retirement of the respondent from the partnership firm. Without any evidence, the Arbitrator has given a finding that a sum of Rs.14,47,521/- is payable by the petitioner firm to the respondent in the impugned Arbitral Award.

8. A categorical assertion has been made before this Court by the petitioners that no monies are due and payable by the partnership firm to the respondent as according to the petitioners, the respondent retired from the partnership firm on the same day when they were inducted as partners in the petitioner firm. Before the Arbitrator, the only documents filed by the respondent which has been marked as Exhibits are as follows:-

Ex.C1- dated 04.03.2020 Partnership deed (Xerox)

Ex.C.2-dated 04.03.2020 Retirement deed (Xerox)

Ex.C.3- dated 25.11.2022 Arbitration Notice sent to respondent (Office copy)

Ex.C.4-dated 26.11.2022 Served Acknowledgement Card.

Ex.C.5- Copy of Bank Statement in the name of Claimant.



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9. None of the documents referred to supra which are marked as Exhibits stipulate that the petitioners are liable to pay certain sums of money to the respondent on account of the retirement of the respondent from the petitioner firm. However, without any evidence, the Arbitrator has passed the impugned Arbitral Award directing the petitioner to pay the claim amount as prayed for by the respondent in the Arbitration. There is absolutely no discussion in the impugned Arbitral Award as to how the Arbitrator has come to the conclusion that the petitioners are liable to pay the Award Amount to the respondent. On the contrary, the evidence placed on record by the petitioners before this Court, will clearly reveal that no monies are due and payable by the petitioner firm to the respondent. Therefore, the impugned Arbitral Award is patently illegal and is an unintelligible award. Therefore, the impugned award has to be necessarily set aside by this Court. Accordingly, the impugned Arbitral Award dated 20.11.2023 is hereby set aside and the petition is allowed.

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To

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W/o. Muthusamy,
Plot No.11, Ponni Nagar, Madhanandhapuram,
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ABDUL QUDDHOSE, J.

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