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Arb O.P No. 12 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-09-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P No.12 of 2025

AND

A No. 3710 of 2025

1. P.Moorthy, aged 67 years
Son of Ponnusamy

2. M.Ganesan, aged 35 years
S/o Moorthy
Both are residing at
No.2/104, Jameen Salvarpatti Village,
Naranapuram, Sivakasi Virudhunagar

Petitioners

Vs

1. C.Shanmugathai
W/o.T.Chidambaram

2. T.C.Panchavadivu
Son of T. Chidambaram
Both the respondents residing at
4/42, Thiyagarajapuram, Sivakasi
Presently residing at
No. 104, Thiyagarajapuram,
Mudalipatti Post, Sivakasi
Virudhunagar

Respondents

A No. 3710 of 2025

1. P.Moorthy, aged 67years



S/o Ponnusamy

2. M.Ganesan

Son of Moorthy,

Both petitioners residing at
No.2/104, Jameen Salvarpatti Village,
Naranapuram , Sivakasi, Virudhunagar.

Applicants

Vs

C.Shanmugathai (Deceased)

Wife of T.Chidambaram

1. T.C.Panchavadivu

S/o T.Chidambaram

Both the respondents residing at
4/42, Thiyagarajapuram, Sivakasi.

Presently residing at

No.104, Thiyagarajapuram,
Mudalipatti Post,
Sivakasi, Virudhunagar.

2. T.Chidambaram, 78 years

S/o.Thangamuthu Nadar,
4/42,Nadar Street, Kanniseripatti,
Thammanayakkanpatti,
Viruhunagar 626 189

3. C.Dharmalingam, 51 years

S/o.T.Chidambaram,
4/43,Nadar Street,
Thiyagarajapuram,
Kanniseripudhur,
Mudalipatti,
Sivakasi, Virudhunagar 626 189



4. C.Marisamy 47 years
S/o.T.Chidambaram
4/42, Nadar Street, Kanniseripudur,
Thammanayakkanpatti,
Virudhunagar 626 189

5. C.Kaliraj, 41 years
S/o.T.Chidambaram
4/326-10, Karpagavinayakar Street,
Amathur, Virudhunagar 626 005

6. P.Thangathai, 39 years
W/o.Prabhu Prasath
No.36,Sri Ram Nagar
Chetty Thangal Road
Ranipet 632 401

Respondents

Arb O.P No. 12 of 2025

PRAYER

To Appoint a Sole Arbitrator to hear and decide the Arbitral dispute between the Petitioners and the Respondents, arising out of the Partnership deed, dated 28.07.2019.

A No. 3710 of 2025

PRAYER

To permit the applicants to bring on record the Respondents 2 to 6 / Proposed Respondents 3 to 7 who are Legal Representatives of the 1st Respondent in above O.P. 12 of 2025.

Arb O.P No. 12 of 2025

For Petitioners : Mr.Sunny Sheen for
M/s Kingsly Solomon J

For Respondents : Mr.S.M.Ananthamurugan

**ORDER**

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of a sole Arbitrator to hear and decide the dispute between the petitioners and the respondents arising out of the Partnership Deed dated 28.07.2019.

2. The case of the petitioners is that the first respondent is the sister of the first petitioner and the second respondent is the son of the first respondent. In the year 2019, the petitioners and the respondents jointly decided to start a partnership firm in the name of “Sri Durkesh Fireworks”. The further case of the petitioners is that they jointly purchased properties in order to carry on business and the firm was engaged in the manufacture and sale of fireworks and other allied products. The petitioners state that in the month of November, 2022, the first petitioner expressed interest in purchasing the shares in the firm and the respondents also agreed to transfer the combined 50% shares and quoted a consideration of Rs.4,00,00,000/-. The first petitioner claims that a sum of Rs.3,50,00,000/- has already been paid to the respondents and the first petitioner was ready and willing to pay the balance amount of Rs.50,00,000/-. However, the respondents are unwilling to transfer their shares. Hence, a legal notice dated 02.12.2024 was issued by the respondents informing the petitioners that the firm stood terminated with effect from 02.12.2024 and called upon the petitioners to hand over the firm licence, account books, keys and all other belongings and assets of the firm. Thereafter, the respondents also issued paper



publication dated 05.12.2024 in Tamil daily through which they publicly declared that the partnership between the petitioners and the respondents stood dissolved as of 02.12.2024.

3. The petitioners, aggrieved by the same, issued a reply notice dated 16.12.2024 and objected to the unilateral action taken by the respondents.

4. It is under these circumstances, the petitioners issued the trigger notice under Section 21 of the Arbitration and Conciliation Act on 31.03.2025 by proposing the name of retired District Judge to act as Arbitrator at Madurai. The respondents received the same and there was no response from them. Hence the present petition has been filed before this Court to refer the dispute for arbitration.

5. The learned counsel for respondents submitted that the first respondent died during the pendency of the proceedings on 03.06.2025. The learned counsel further submitted that the firm stood dissolved by operation of law and pursuant to the same, the arbitration clause in the agreement cannot stand independently, since the rights of third parties qua the firm and its partners can never be decided by the Arbitrator. To substantiate his submission, the learned counsel relied upon the judgment of this Court in *R.Subbulakshmi and others v. R.Venkitapathy and others* made in O.P.Nos.40 of 2019 etc dated 10.08.2023. The learned counsel submitted that this Court framed a specific issue as to



whether after the dissolution of the firm, the Arbitrator can proceed further and act as a liquidator for the dissolved firm. It was submitted that this Court specifically took note of the effect of Section 43 of the Partnership Act and came to a conclusion that once the firm is dissolved, the subsequent proceedings with respect to liquidation has to happen in accordance with law and the Arbitrator cannot adorn that role.

6. In the case on hand, it is admitted that it is a Partnership at Will and hence, once the notice is being served terminating the partnership and public notice has also been issued, the firm does not exist and the subsequent settlement of shares and the rights that are claimed by the third parties, cannot be done by the Arbitrator. In view of the same, the learned counsel sought for the dismissal of this petition.

7. Per contra, the learned counsel for petitioners submitted that the dispute in the present case pertains to the payment of the balance amount of Rs.50,00,000/- by the petitioners after having settled the substantial amount of Rs.3,50,00,000/- for having purchased 50% shares from the respondents. There is a dispute regarding this payment that is said to have been made by the petitioners. It was therefore contended that this limited issue as between the parties can always be decided by the Arbitrator. The learned counsel further submitted that the validity of the unilateral dissolution of the partnership firm can also be decided by the Arbitrator and ultimately, if the Arbitrator comes to a



conclusion that the firm has been dissolved, the Arbitrator thereafter cannot act as liquidator and the process of law has to take the dispute to its logical end.

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8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The scope of the petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 was gone into in extenso in a recent judgment in Arb.O.P.(Com.Div.)No.319 of 2025 dated 16.09.2025. This Court, after considering all the judgments on the issue, came to the following conclusions:-

“28. The result of the discussions is that the wheel has now come a full circle. The test formulated by the Hon'ble Supreme Court in the decision in **Duro Felguera, S.A.**, departed from the decision of the Hon'ble Supreme Court in **Hyundai Engineering & Construction Co.Ltd.**, has now been reinstated in the decision of the Hon'ble Supreme Court in **Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act, 1899**. Consequently, it must follow that the jurisdiction of the Court under Section 11(6A) is confined to examining the existence of an arbitration agreement. Nothing more and nothing less.

29. As the Hon'ble Supreme Court pointed out in the decision in **Managing Director, Bihar State Food and Civil Supply Corporation Limited**, it is just as necessary to follow a precedent as it is to make one. The objections of the respondent on grounds of limitation and accord and satisfaction must, therefore, necessarily await adjudication before the Arbitral Tribunal.”



10. In view of the above, the scope of the present petition confines itself only to examination of the existence of arbitration agreement in line with Section 7 of the Arbitration and Conciliation Act. Nothing more and nothing less.

11. In the course of arguments, the learned counsel for respondents, by pointing out to Section 10 of the Commercial Courts Act, 2015, submitted that all applications or appeal arising out of the matters other than commercial arbitration, can only lie before the Principal Civil Court of Original Jurisdiction in the District. Admittedly, in the present case, the dispute had arisen within the jurisdiction of Virudhunagar. Therefore, application can be filed only before the Principal District Judge, Virudhunagar and not before this Court.

12. The above preliminary objection that was raised by the learned counsel for respondents cannot be sustained, for the simple reason that a petition under Section 11 for appointment of Arbitrator can be filed only before the High Court or before the Supreme Court, as the case may be, and it cannot lie before a Principal District Court. Since the present case involves appointment of Arbitrator, the provisions under the Arbitration and Conciliation Act, 1996 will get precedence over the Commercial Courts Act, 2015. Therefore, the present petition filed under Section 11 before this Court is certainly maintainable.



13. The next issue pertains to the ground raised by the learned counsel for respondents to the effect that the partnership firm has already been dissolved and therefore the Arbitrator cannot adorn the role of liquidator to decide the rights of the third parties qua the partnership firm and its partners.

14. The basis of the above submission made by the learned counsel for respondents is Section 43 of the Partnership Act. Section 43 talks about the rights of the partners to seek for dissolution in a Partnership at Will. According to the learned counsel for respondents, once the dissolution is sought for and notice of dissolution has been issued, the firm stands dissolved from the date specified in the notice. Under such circumstances, the partnership deed comes to an end and the arbitration clause in the deed cannot have effect in appointing an Arbitrator to decide the issue. This is more so since third party rights will get in after the dissolution of the firm.

15. There are basically two issues that are involved in this case. The first issue is with respect to the inter-se dispute between the partners and the settlement of their shares, income, etc. The other issue is with respect to whether there was a proper dissolution of the firm. Insofar as the former is concerned, the dispute can always be decided by the Arbitrator. Even assuming that the partnership firm has come to an end, it is not possible to accept that the arbitration clause will cease to exist. There is a valid arbitration agreement between the parties and the disputes have arisen between the parties and the



parties are bound to resolve their dispute only before the Arbitrator. To that extent, the inter-se dispute has to go only before the Arbitrator. Insofar as the latter issue is concerned, it is always left open to the Arbitrator to decide as to whether there was a valid dissolution of the firm. If ultimately the Arbitrator finds that the firm has been properly dissolved, he cannot thereafter continue as liquidator, since the Arbitrator cannot decide the third parties' rights qua the firm and its partners. That is an issue which cannot be considered while dealing with a petition under Section 11(5) & (6) of the Arbitration and Conciliation Act. It has to be left open to the Arbitrator to deal with this issue, since the Arbitral Tribunal is entitled to decide on its jurisdiction under Section 16 of the Arbitration and Conciliation Act.

16. In the light of the above discussion and in the light of the limited jurisdiction that is available to this Court, all the objections that have been raised on the side of respondents can always be raised before the learned Arbitrator, who will decide the same on its own merits and in accordance with law.

17. The upshot of the above discussion is that there is a partnership deed between the parties and it contained an arbitration clause and this agreement is in line with Section 7 of the Arbitration and Conciliation Act. All the other objections have to be raised only before the learned Arbitrator. Hence, this Court is inclined to appoint a sole Arbitrator to decide the disputes between the



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parties. On carefully reading the partnership deed and also after taking into consideration the fact that the cause of action had arisen at Virudhunagar, this Court can safely conclude that the seat of Arbitrator can be placed at Madurai. Accordingly, Mr.S.Srinivasa Raghavan, Advocate, residing at No.2/583 Alli Street East, First Floor, Sixth Main Road, Gomathipuram, Madurai 626 020 (Mobile No.94423 62835) (email: ssrlawoffice@yahoo.co.in) is appointed as the sole Arbitrator in this case. The learned Arbitrator is requested to enter upon reference qua the partnership deed dated 28.07.2019 containing the arbitration clause and adjudicate upon the disputes that have arisen between the parties by holding the sittings in any venue at Madurai to the convenience of all concerned and render an award. The fees of the learned Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC)(Administrative Cost and Arbitrator's Fees) Rules, 2017. The learned Arbitrator, after issuing notice to both the parties and upon hearing them, is requested to pass an award as expeditiously as possible as the partnership deed is of the year 2019.

18. This original petition stands allowed in the above terms. Consequently, A.No.3710 of 2025 stands closed.

22-09-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



Registry is directed to communicate
the copy of order forthwith

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ss

To

1. Mr.S.Srinivasa Raghavan
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Madurai 626 020
(Mobile No.94423 62835)
(email: ssrlawoffice@yahoo.co.in)
2. The Director
Tamil Nadu Mediation and Conciliation
Centre-cum-Ex-Officio Member
Madras High Court Arbitration Centre
Chennai – 600 104



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Arb O.P No. 12 of 2025



**N.ANAND
VENKATESH J.**

SS

**Arb O.P No.12 of 2025
and A.No. 3710 of 2025**

22-09-2025