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Arb.O.P.(Com.Div.)No.366 of 2023

In the High Court of Judicature at Madras

Reserved on 11.9.2025	Delivered on : 15.9.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.)No.366 of 2023

Mr.C.Srinivasalu, Partner,
Sri Krishna Palace, No.91-D,
II Cross Appavunagar Colony,
Thali Road, Hosur Town &
Taluk, Krishnagiri District.
635109.

...Petitioner

Vs

Mr.C.Venkatesh, Managing
Partner, M/s.Krishna Palace,
50/2, Netaji Road, Near
Sub-Collector Bungalow,
Opp.Railway Station Road,
Denkanikotta Road, Hosur,
Krishnagiri District.

...Respondent

PETITION under Section 34(2)(v) of the Arbitration and Conciliation Act, 1996 praying to set aside the award dated 05.5.2023 made in O.P.No.1020 of 2017 passed by the learned Arbitrator Mr.G. Palaniappan, former District Judge and to award costs of the proceedings to the petitioner.



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For Petitioner : Mr.N.Manoharan
For Respondent : Ms.Charishma for
Mr.Avinash Wadhwani

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) against the award dated 05.5.2023 passed by the sole Arbitrator.

2. Heard both.

3. The facts leading to filing of this case are as follows :

(i) The petitioner is the younger brother of the respondent. He is the owner of a plot at Hosur Village, Krishnagiri District by virtue of a registered sale deed dated 17.5.2006. The respondent also owned a piece of land in a different survey number in the same Hosur Village. The petitioner and the respondent decided to start a partnership firm and a partnership deed dated 20.11.2009 was executed between the parties with several terms and conditions by agreeing that all the income, expenditure and investments would be shared by the petitioner and the respondent in the ratio of 30 : 70.



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(ii) The partners contributed towards construction of a building in the vacant land and certain portions of the building were also given on lease to various persons on monthly rental. It is alleged by the petitioner that the respondent, without informing the petitioner and without his knowledge, took further loans in the name of the partnership firm and purchased several properties in his name.

(iii) A dispute arose between the parties and hence, the petitioner issued a letter dated 23.10.2017 expressing his intention to dissolve the partnership firm. The respondent was also stated to have agreed to such a proposal. Since it did not go through, the petitioner filed O.S.No.123 of 2017 before the Principal District & Sessions Court, Krishnagiri seeking to declare the partnership firm as dissolved and for other consequential reliefs.

(iv) After filing of the said suit, the respondent filed a petition in O.P.No.1020 of 2017 before this Court under Section 11(6) of the Act for appointment of an arbitrator on the ground that the partnership deed provided for resolving the dispute through arbitration process. Further, this Court, by order dated 21.11.2019, appointed a sole Arbitrator to enter upon a reference and adjudicate the dispute between the parties.



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(v) The respondent also filed an application under Section 9 of the Act seeking for certain interim relief. However, this application was dismissed on the ground that the said application could be moved before the learned Arbitrator under Section 17 of the Act.

(vi) In the meantime, the respondent filed an application in I.A.No.4 of 2021 in O.S.No.123 of 2017 before the Principal District & Sessions Court, Krishnagiri under Section 8 of the Act and it was allowed by order dated 13.2.2023 since this Court had already appointed a sole Arbitrator and the matter was pending before the sole Arbitrator.

(vii) The sole Arbitrator ultimately passed an award dated 05.5.2023 wherein the petitioner was set ex parte and by granting the following reliefs :

"a) The partnership firm M/s.Sri Krishna Palace is dissolved on and from 23-10-2017 and the claimant is entitled to 70% of share in the dissolved firm;

b) This Tribunal declares that the respondent is entitled to a sum of Rs.2,04,63,568/- towards his 30% share in the partnership firm of M/s.Sri Krishna Palace, on the basis of the books of accounts as on 31-03-2020. The respondent is entitled to interest calculated at 18% per annum



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on the above said sum of Rs.2,04,63,568/- from 01-4-2021 to till the date of actual payment. The claimant is directed to pay the said amount within a period of six months from the date of receipt of the Award. On such payment made by the claimant, the respondent will have no connection, whatsoever with the erstwhile partnership firm.

c) The Claimant is absolutely entitled to receive back the original documents of title now in the custody of M/s.Repco Home Finance Ltd., Hosur, upon payment of all the loan amounts by the Claimant and take and keep the original documents of title in his possession and custody.

d) The claimant is entitled to a permanent injunction, upon dissolution of the firm, restraining the respondent from interfering with the peaceful business carried on by the claimant as a proprietorship concern.

e) The Tribunal declares that the respondent has no claim in the claimant's personal business property located at Shoolagiri village in the name of "JJ Nagar Mountain View Residential Layout.

f) The claimant is entitled to a Permanent Injunction restraining the respondent from interfering with the peaceful and enjoyment of the claimant's personal business property located at Shoolagiri village in the name of 'JJ Nagar Mountain View Residential Layout'.



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g) *The claimant is entitled to 50% of the cost."*

(viii) Aggrieved by that, the above petition has been filed before this Court.

4. The learned counsel for the petitioner made the following submissions :

(a) While this Court appointed the sole Arbitrator vide order dated 21.11.2019 in O.P.No.1020 of 2017 under Section 11(6) of the Act, it was made clear that the proceedings should be conducted at Hosur. The parties gave their consent to conduct the proceedings at Hosur and the venue was also selected at Hosur. For a couple of hearings, the arbitration proceedings went on at Hosur. However, the sole Arbitrator unilaterally changed the venue to Chennai vide letter dated 05.8.2022. On receipt of the said letter, the petitioner submitted his objections on 11.8.2022. The petitioner also informed the sole Arbitrator that the mandate had expired and that therefore, the arbitration proceedings could not be continued without getting extension of time from the Court.



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(b) In spite of the objections raised by the petitioner, the venue was changed and the petitioner never received any notice thereafter. The respondent also filed an application under Section 23(3) of the Act for extension of time for filing additional claim and this was allowed without notice to the petitioner. Ultimately, the award came to be passed on 05.5.2023.

(c) A preliminary objection was raised by the petitioner on the ground that the dispute is non arbitrable and an application was filed under Section 16 of the Act. But, this application was not decided and a common award came to be passed. The learned counsel also pointed out certain irregularities in the award passed by the sole Arbitrator.

5. Per contra, the learned counsel appearing on behalf of the respondent questioned the maintainability of the above petition filed under Section 34 of the Act on the ground that this Court lacks territorial jurisdiction. She also made submissions touching upon the merits of the case.

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on



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7. It is not in dispute that both the petitioner as well as the respondent are permanent residents of Hosur, Krishnagiri District. The partnership deed dated 20.11.2009 was entered into at Hosur. The petitioner filed O.S.No.123 of 2017 before the Principal District & Sessions Court, Krishnagiri seeking to declare the partnership firm as dissolved and for other consequential reliefs. While passing the order dated 21.11.2019 in O.P.No.1020 of 2017 filed under Section 11(6) of the Act, this Court made it clear that the seat of arbitration would be at Hosur and further directed that the proceedings should be conducted at Hosur in accordance with the Madras High Court Arbitration Rules.

8. The sole Arbitrator sought for the consent of both parties to conduct the proceedings at Hosur and they also mutually agreed to the venue where the proceedings were proposed to be conducted at Hosur. However, the sole Arbitrator seemed to have changed the venue from Hosur to Chennai in the year 2022 in spite of the objections given by the petitioner vide letter dated 11.8.2022. It is,



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therefore, very clear that the parties have accepted the seat of arbitration to be at Hosur and it was further confirmed when the order dated 21.11.2019 was passed by this Court in the petition filed under Section 11(6) of the Act directing the sole Arbitrator to conduct the proceedings at Hosur.

9. In the light of the admitted facts, the fundamental question that arises for consideration is as to whether this petition filed under Section 34 of the Act is maintainable before this Court.

10. Where the parties have agreed to a particular place as the seat of arbitration, the jurisdiction of the Court either under Section 9 or under Section 34 of the Act can be determined only by taking into consideration such seat of arbitration that has been agreed to between the parties. In certain circumstances, even an unagreed venue can be considered to be a seat in a domestic arbitration. It is also possible in certain cases where the parties initially agree to a particular place to be a seat of arbitration, but later shift the seat of arbitration to a different place and in such cases, the place, to which, the seat was shifted, becomes the basis for deciding the jurisdiction of the Court.



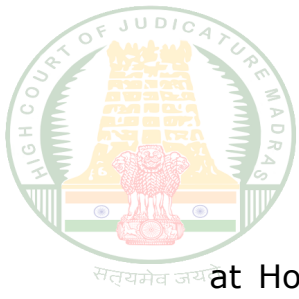
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Thus, the Courts always look at the clear agreement/intention of the parties in so far as the seat of arbitration is concerned.

11. In the case in hand, at no point of time, the parties ever intended to shift the seat of arbitration from Hosur. It is the specific case of the petitioner that the sole Arbitrator unilaterally shifted the venue from Hosur to Chennai. Such unilateral decision taken by the Arbitrator to shift the venue without the consent of either parties cannot vest the jurisdiction in a court having jurisdiction over the venue, to which, the arbitration proceedings were shifted. The materials available before this Court would show that every other proceedings by way of application under Section 9 or by way of filing a regular suit always took place only before the Principal District & Sessions Court, Krishnagiri.

12. At the risk of repetition, it must be stated that even when the order dated 21.11.2019 was passed by this Court appointing the sole Arbitrator, it was made clear that the proceedings must be conducted only at Hosur. Under such circumstances, this Court holds that the seat of arbitration as was agreed between the parties is only



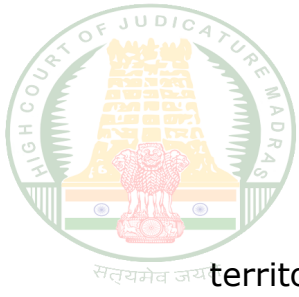
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at Hosur and not at Chennai. By shifting the venue from Hosur, the sole Arbitrator cannot shift the seat of arbitration also to Chennai. The venue is nothing but a geographical location and unless the venue has been agreed upon by both parties, it will not automatically become the seat of arbitration.

13. In the light of the above discussions, this Court holds that the award dated 05.5.2023 passed by the sole Arbitrator cannot be challenged before this Court under Section 34 of the Act.

14. Section 2(1)(e) of the Act defines a court and the definition itself makes it clear that it is only the principal civil court of original jurisdiction in a district, having jurisdiction to decide the question forming the subject matter of arbitration, can entertain an application/petition if the same had been the subject matter of a suit. In so far as seat so chosen namely Hosur is concerned, such a petition can lie only before the Principal District & Sessions Court, Krishnagiri, which is the principal civil court of original jurisdiction in so far as the arbitration matters are concerned. The upshot of all the above discussions would lead to the only conclusion that the above original petition lacks



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15. Accordingly, the above original petition is disposed of. Liberty is granted to the petitioner to file the petition under Section 34 of the Act before the Principal District & Sessions Court, Krishnagiri. The petitioner was bona fidely prosecuting the above petition before this Court. Hence, the period that has been spent by the petitioner before this Court shall be excluded for the purpose of limitation. The petitioner is directed to file the petition before the Principal District & Sessions Court, Krishnagiri within a period of 30 days from today. On such filing, the petition shall be dealt with by the Principal District & Sessions Court, Krishnagiri on its own merits and in accordance with law. It is needless to say that it is left open to both the parties to raise all the grounds available to them.

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Index : Yes
Neutral Citation : Yes

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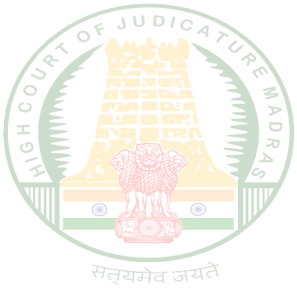
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After the orders were pronounced, the learned counsel for the petitioner requested that the original award must be returned back to the petitioner to enable the petitioner to move the Principal District Judge, Krishnagiri. The learned counsel further submitted that since the petition has been returned back to the petitioner to present the same before the Principal District Judge, Krishnagiri, the court fee must be refunded to the petitioner.

2. Registry is directed to return back the original award to the learned counsel for the petitioner to enable the petitioner to file the same before the Principal District Judge, Krishnagiri. The petitioner is also entitled for refund of the Court fee since the petition has been returned on the ground that it is not maintainable before this Court.

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