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Arb.A.No.2 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 04.08.2025	PRONOUNCED ON 07.10.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

**Arb.Appeal.No.2 of 2025
& CMP.No.634 of 2025**

1.Mr.M.Sivakumar

2.M/s.RHRAishwaryam

Rep., by Prop., M.Sivakumar

No.27, State Bank Road,

Coimbatore – 641 018

... Appellants

Vs.

1.Mr.R.Guruswamy

2.Mr.R.Gurumoorthy

3.Mr.V.S.Guruswamy

4.M/s.G.Sundaravel and Brothers.,

Having its Registered office at

No.27, State Bank Road,

Coimbatore – 641 018

Rep., by its Partners

... Respondents

Prayer: Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, against the order passed by the Sole Arbitrator Mr.Justice K.Ravichandrabaabu (Retd), dated 18.05.2024 passed in Application No.1 of 2024 in unnumbered Arbitration Case of 2024, allowing the application filed by



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the respondents No.1 and 2 herein for grant of injunctions and other interim reliefs.

For Appellants : Mr.M.K.Kabir Sr., Counsel for
Mr.P.K.Rajagopal

For Respondents : Mr.R.Vidhya Shankar for RR1 & 2
No Appearance for RR3-4

JUDGMENT

This Appeal had been filed to set aside the order passed by the learned Sole Arbitrator, dated 18.05.2024 in Application No.1 of 2024 in the unnumbered Arbitration case in the matter of Partnership Deed dated 02.07.2020.

2.Heard Mr.M.K.Kabir, learned Senior counsel appearing for Mr.P.K.Rajagopal, learned counsel appearing for the appellants and Mr.R.Vidhya Shankar, learned counsel appearing for the respondents 1 & 2.

3. Mr.M.K.Kabir, learned Senior Counsel appearing for the appellant would submit that the partnership firm namely M/s.G.Sundaravel and Brothers (hereinafter referred to as “partnership firm”) was the subject matter of the arbitration and that the second appellant herein is a proprietorship concern. The partnership firm had been running a lodging business in a part of the property



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and also running a hotel in the name of the Thai Hotel. The partners of the firm namely the first appellant, the respondents 1 to 3 are also the Directors of the second appellant. However, the respondents 1 & 2 had approached the Commercial Division of the District Court, Coimbatore by filing an application under Section 9 of the Arbitration and Conciliation Act (hereinafter referred to as “Act”) for a temporary injunction against the appellants for carrying on any business activities in the subject property and for a direction to disclose their accounts including the income generated from carrying on business in the said property.

4. The learned Senior Counsel would further submit that, as against the *ex-parte* order granted, the appellants have filed a Civil Miscellaneous Appeal before this Court and during the course of their arguments, the Hon'ble Division Bench found that the parties were agreeable to resolve the disputes through arbitration by a consent order, constituted an Arbitral Tribunal headed by a retired Judge of this Court. The Division Bench *inter-alia* had set-aside the *ex-parte* interim order granted by the Commercial Division of the Division Court with liberty to the parties to approach the learned Arbitrator under Section 17 of the Act 1996. He would further submit that the respondents 1 & 2 herein after



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reference in consonance with the order passed by the Division Bench of this Court had taken out Interim Applications and obtained various interim orders which have been challenged by the appellants herein.

5. The learned Senior Counsel appearing for the appellants, at the outset would submit that the fourth respondent is a partnership firm and the second appellant is a proprietorship firm. According to him, the portion of the property belonging to the fourth respondent was leased to a distinct Company RHR Hotels (P) Limited of which the partners of the fourth respondent firm are the Directors. After the period of lease was over, the third respondent as one of the partners had executed a lease deed in favour of the second appellant of which the first appellant is a proprietor and has been carrying on a restaurant business. He would further submit that the fourth respondent does not have any control over the said Private Limited Company nor the second appellant which is a proprietorship firm. When that being so, the entire arbitration proceedings which was initiated by the first and second respondents as against the appellants particularly the second appellant, is without jurisdiction. He would further submit that the learned Arbitrator does not have jurisdiction to pass any orders



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that will bind the second appellant in particular as there is no arbitration agreement and the arbitration agreement in the partnership deed of the fourth respondent cannot be extended to the appellants. Therefore, he prays this Court to interfere with the orders passed by the learned Arbitrator.

6. Countering his arguments, Mr.R.Vidhya Shankar, learned counsel appearing for the respondents 1 & 2 would contend that a restaurant under the name and style of Royal Hindu Restaurant in short RHR has been promoted by one Gurusamy Nadar as early as in the year 1931. He had also started a lodging house in the name of Hotel Thai. He would further submit that he had three sons by name G.Sundaravel, G.Ratnavel and G.Manickkavel. All the three sons joined in the above said business by constituting a registered partnership firm in the name of the fourth respondent. The partners belonging to three branches have always held 1/3rd share each in the fourth respondent partnership firm. He would further submit that in the place owned by the fourth respondent, a Private Limited Company in the name and style of RHR Hotels Private Limited was promoted by the partners of the fourth respondent in which they held their shares in the same ratio, as in the fourth respondent. The fourth respondent had leased out its property to the Company under a lease deed in the year 2006 for a



period of 15 years. When the matter stood thus, without the consent from the other partners, the first appellant, in the place where the Company was running its restaurant by obtaining an independent GST, as the proprietor of the second appellant, had commenced his operations. He would submit that the property of the partnership is being misused by the appellants.

7. He would further submit that the second appellant has been in illegal occupation of the property belonging to the fourth respondent. He would submit that as per Clause 18 of the Partnership Agreement, the disputes between the parties are to be resolved through arbitration. The fourth respondent being the absolute owner of the land and building in which it had originally carried on business, the Company which was floated by the partners of the fourth respondent was given on lease, a portion of the property in which the restaurant was hitherto be run by the partnership firm. The lease was granted for a period of 15 years which by efflux of time stood terminated and the possession of the property vested back with the fourth respondent. Taking advantage of the relationship between the parties, the first appellant had clandestinely on the same name started a proprietorship concern and with the connivance of the third respondent took over the business of the partnership firm by creating a separate



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GST registration in the name of the second appellant, as a proprietorship concern with an intention to defeat the right of the partnership business. The first appellant being a partner and also the Director in the Company is usurping his rights by running a business in his own name and in the property belonging to the fourth respondent firm. He would further submit that the learned Administrator had appreciated all the material facts and had passed the order impugned herein which cannot be faulted. He would submit that the learned Arbitrator had protected the interest of all the parties concerned. Therefore, he prays this Court to dismiss the appeal filed by the appellants.

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

9. The undisputed facts are:-

a) that a lodging hotel by name Thai Hotels and a restaurant in the name of Royal Hindu Restaurant shortly called RHR were originally started by one M.A.Gurusamy Nadar as early as in the year 1931. After his sons joined in the business, they had created a



partnership firm in the name of the fourth respondent in which three brothers who were the sons of M.A.Gurusamy Nadar became the partners. In course of time, in each branches, legal heirs of each of the brothers held 1/3rd share each in the fourth respondent.

b)The RHR Hotels Private Limited, a distinct legal entity was incorporated in the year 2005 in which the partners of the fourth respondent held proportionate share holding and each of the partners were also appointed as Directors. The fourth respondent had leased the portion of the property to the Company for carrying on the restaurant business.

10. The present arbitration proceedings had been initiated by the respondents 1 & 2 as against the appellants and the respondents 3 & 4. It is the claim of the respondents 1 & 2 that the Private Limited Company floated by the partners in the fourth respondent in which the shares were also held in the same proportion, as the fourth respondent is bound by the Clause of arbitration in the partnership agreement of the fourth respondent. The said Private Limited Company had not been made a party to the arbitration proceedings. On the other



hand, it is the claim of the respondents 1 & 2 that the lease should be terminated with the company by efflux of time and the first appellant being one of the Director who is incharge of the running of the Company using his clout with the third respondent had entered into a separate lease agreement with the third respondent on behalf of the fourth respondent and had taken control over the restaurant business which was originally established by the fourth respondent.

11. Here it is to be noted that the partners in the fourth respondent had voluntarily floated a Private Limited Company hitherto to run the hotel carried out by the fourth respondent. On the incorporation of the Private Limited Company, the fourth respondent did not have any control over the running of the restaurant. If it is the claim of the respondents 1 & 2 that there has been an infraction in the running of the restaurant, they could have only questioned the same by invoking the provisions of the Companies Act, as the running of the restaurant had been taken over by the Company incorporated by the partners of the fourth respondent and the fourth respondent having entered into an agreement of lease for leasing out a portion of the property in which the restaurant business was carried on by the company.



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12. The allegations made against the appellants 1 & 2 are in the nature of oppression and mismanagement of the private Limited Company which had also not been made as a party to the arbitration proceedings. Further, the second appellant is a proprietorship concern floated by the first appellant. The said proprietorship concern is also not a partner in the fourth respondent for the arbitration Clause to be bound on it. Viewing the facts of the case in the aforesaid scenario, this Court is of the view that the interim order passed as against the second appellant and the first appellant as the proprietor of the second appellant is beyond the scope of the dispute arising under the Clause 18 of the Partnership Agreement. Arbitration can only be proceeded against a party to the agreement of arbitration and not against the second appellant, as it is not a party.

13. The fourth respondent and its partners having voluntarily stopped carrying on the restaurant business as early as in the year 2005 by incorporating the Private Limited Company for carrying on the said business cannot be now said to be aggrieved by the business carried on by the second appellant. Utmost the fourth respondent can only claim arrears of rent from the second appellant. Further, as already indicated, the dispute with regard to the running of the



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restaurant business in a Private Limited Company cannot also be adjudicated in the arbitration proceedings initiated by the respondents 1 & 2 and their remedy lies before the Company Law Tribunal as envisaged under the Companies Act, 2013.

14. For the aforesaid reasonings and findings, this Court is of the view that the learned Arbitrator has exceeded his jurisdiction to pass orders as against the appellants herein particularly the second appellant and in that context the interim order passed by the learned Arbitrator requires to be interfered with.

15. In fine, the appeal stands allowed and the order of the learned Arbitrator dated 18.05.2024 is set aside. Consequently, connected Civil Miscellaneous Petition is also closed. However, there shall be no order as to costs.

07.10.2025

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Index :Yes/No
Internet:Yes/No



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K.KUMARESH BABU, J

Gba

Pre-Delivery Order in
Arb.Appeal.No.2 of 2025
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