



WEB COPY



Arb.O.P.(Com.Div.)No.731 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.03.2026

Pronounced on: 30.03.2026

CORAM:

THE HONOURABLE **Mr. JUSTICE P.DHANABAL**

Arb.O.P.(Com.Div.)No.731 of 2025

M.John Rose (Male/70 years)
S/o.Maria Michel
Rep. by its Power Agent,
Biju John,
S/o.John Rose
having permanent residence
at No.5-55, Shanthi Nikethan,
Otta Pilavaillai Veedu, Puthukadai,
Arudesom Village,
Vilavancode Taluk (Now Killiyoor Taluk),
Kanyakumari District.

...Petitioner

vs.

D.John Franklin

...Respondent

Prayer: Arbitration Original Petition filed under Section 11(6) of Arbitration and Conciliation Act, 1996, to appoint Mr.S.Mukund, Senior Advocate of Madras High Court or any other person as this Court may deem fit, proper and appropriate to act as the Sole Arbitrator to adjudicate the disputes and differences that have arisen between the petitioner and the respondent as per Clause 20 of the Partnership Deed, dated 05.04.2006.

For Petitioner : Mr.Abhinav Parthasarathy

For Respondent : Mr.Adithya Varadarajan



Arb.O.P.(Com.Div.)No.731 of 2025

ORDER

This petition has been filed by the petitioner to appoint Mr.S.Mukund, Senior Advocate of Madras High Court or any other person as the Sole Arbitrator to adjudicate the disputes and differences that have arisen between the petitioner and the respondent, as per Clause 20 of the Partnership Deed dated 05.04.2006.

2. According to the petitioner, he entered into Partnership Deed with the respondent on 05.04.2006. Now the petitioner is residing at Muscat, Oman and thereby he appointed Mr.Biju John as Power Agent through Power Deed dated 17.07.2025. The petitioner and the respondent are hailing from the same village and are known to each other. While so, the respondent had approached the petitioner seeking financial assistance to set up M/s.HSD Dealership of petrol, diesel, oil and speed diesel etc. at Panikulam Village. The petitioner had invested money towards purchase of the property to set up the petrol bunk and to pay the necessary licence fee and earnest money. The dealership licence was obtained in the name of the respondent under the name and style of M/s.Annai Petroleum at Panikulam Village. The properties were also purchased in the name of the respondent. The petitioner invested a sum of Rupees 16.5 lakhs for the business and also invested a sum of Rupees 2 lakhs towards earnest money with BPCL for getting a letter of intent towards construction of an office building for the purpose of partnership business.



Arb.O.P.(Com.Div.)No.731 of 2025

WEB COPY

2.1. As per Clause 6 of the Partnership Deed, purchase of land was done in the name of the respondent and letter of intent and licence were also obtained in the name of respondent from BPCL. The bank account of the partnership firm was held with the State Bank of Travancore, Irenipuram Branch, solely operated by the respondent. On 07.03.2018, the respondent issued a letter to the petitioner stating that the petitioner has orally sought for return of capital amount invested in the firm and the respondent is ready to refund the capital amount of Rupees 16.5 lakhs. The petitioner had issued a reply notice dated 03.04.2018 denying the averments in the notice and denied his consent to wind up the partnership business and thereafter, since 2018 there has been no communication from the respondent and no payments have been rendered by the respondent to the petitioner. Therefore, the petitioner issued a legal notice dated 22.02.2024 claiming equal share in the above said business. No reply has been received from the respondent.

2.2. Taking advantage of the petitioner's old age and his frequent absence from the Country, the respondent had failed to pay lawful dues as per the Partnership Deed and also not permitted the petitioner to access the books related to the business. Thereafter, on 04.03.2025, the petitioner had effected a legal notice through his counsel by invoking Clause 20 of the Partnership Deed to amicably resolve the issues between themselves and had nominated



Arb.O.P.(Com.Div.)No.731 of 2025

the aforesaid senior advocate to act as a Sole Arbitrator. Belatedly on 13.05.2025, the respondent issued reply refuting the contents of the notice dated 04.03.2025. The respondent neither accepted the Sole Arbitrator nominated by the petitioner nor nominated any other person for being appointed as Sole Arbitrator. Therefore, the petitioner filed this petition for appointment of Arbitrator.

3. The respondent denied the partnership itself and also denied the money invested by the petitioner. However, he admitted that he borrowed a sum of Rupees 16.5 lakhs from the petitioner for his personal needs in the year 2006 and at that time, the petitioner brought a document and obtained the signature of the respondent saying that it was a Deed evidencing the debt. Therefore, there is no necessity to nominate a Sole Arbitrator or to initiate Arbitration proceedings, as the respondent has not consented for Arbitration. Even as per the Partnership Deed, the appointment of Arbitrator is optional. The words mentioned in the Deed is that the dispute or disagreement shall be settled by mutual consultation or by arbitration as provided by law. The above stated words show that Arbitration is optional and thereby, according to the respondent, he has not consented for Arbitration proceedings.

4. This Court heard both sides and perused the records.



Arb.O.P.(Com.Div.)No.731 of 2025

5. The petitioner filed this petition for appointment of Arbitrator alleging that there was a Partnership Deed between the parties and as per the Deed, if any dispute arose between the parties, they have to settle the same amicably by Arbitration. The respondent denied the execution of the Partnership Deed and according to him, he borrowed money from the petitioner and for that purpose, he signed the Deed. It is an admitted fact that already notices had been exchanged between the parties and in that notice, the petitioner has categorically relied upon the Partnership Deed dated 05.04.2006. The respondent simply denied the Partnership Deed. However, he admitted that some documents were executed. Therefore, genuinity of the Deed can only be decided by the Arbitration Tribunal. The copy of the Deed has been produced before this Court and as per Clause 20 of the Deed, *'In case of any dispute or disagreement amongst the partners, such dispute or disagreement shall be settled by mutual consultation or by arbitration as provided for by law in that respect'*. The respondent by referring to the above stated that since the words used are, shall be settled by mutual consultation or by arbitration, Arbitration proceedings is option of the respondent and it is not mandatory.

6. At this juncture, the learned counsel for the respondent relied upon the following Judgments.



Arb.O.P.(Com.Div.)No.731 of 2025

i.Jagdish Chander vs. Ramesh Chander and others, (2007) 5 SCC 719,

wherein, the Apex Court in paragraph no.9 has held as follows:-

ii."9. Para 16 of the Partnership deed provides that if there is any dispute touching the partnership arising between the partners, the same shall be mutually decided by the parties or shall be referred to arbitration if the parties so determine. If the clause had merely said that in the event of disputes arising between the parties, they "shall be referred to arbitration", it would have been an arbitration agreement. But the use of the words "shall be referred for arbitration if the parties so determine" completely changes the complexion of the provision. The expression "determine" indicates that the parties are required to reach a decision by application of mind. Therefore, when clause 16 uses the words "the dispute shall be referred for arbitration if the parties so determine", it means that it is not an arbitration agreement but a provision which enables arbitration only if the parties mutually decide after due consideration as to whether the disputes should be referred to arbitration or not. In effect, the clause requires the consent of parties before the disputes can be referred to arbitration. The main attribute of an arbitration agreement, namely, consensus ad idem to refer the disputes to arbitration is missing in clause 16 relating to settlement of disputes. Therefore it is not an arbitration agreement, as defined under section 7 of the Act. In the absence of an arbitration agreement, the question of exercising power under section 11 of the Act to appoint an Arbitrator does not arise."

iii.BGM and M-RPL-JMCT (JV) vs. Eastern Coalfields Limited, 2025

SCC OnLine SC 1471, wherein the Apex Court in paragraph no.31 has held as follows:-

iv."31.We do not agree with the aforesaid submission because clause 13 does



WEB COPY

Arb.O.P.(Com.Div.)No.731 of 2025
not bind parties to use arbitration for settlement of the disputes. Use of the words "may be sought", imply that there is no subsisting agreement between parties that they, or any one of them, would have to seek settlement of dispute(s) through arbitration. It is just an enabling clause whereunder, if parties agree, they could resolve their dispute(s) through arbitration. In our view, the phraseology of clause 13 is not indicative of a binding agreement that any of the parties on its own could seek redressal of inter se dispute(s) through arbitration. We are, therefore, of the considered view that the High Court was justified in holding that clause 13 does not constitute an arbitration agreement."

v.M.Arumugam vs. CP Foods, rep. by its Partner Mr.S.Manikanda Prabhu,
2025 SCC OnLine Mad 7114.

7. From a careful perusal of the above said Judgments, it is clear that Section 7 of Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'] enables Arbitration only if the parties mutually decided after due consideration as to whether the dispute should be referred to Arbitration or not. In fact, the Clause requires the consent of the parties before the disputes can be referred to Arbitration. If *consensus ad idem* to refer the disputes to Arbitration is missing in the agreement, then it is not an Arbitration Agreement. In the absence of Arbitration Agreement, the question of exercising power under Section 11 of the Act does not arise.



Arb.O.P.(Com.Div.)No.731 of 2025

8. In the case on hand, there is an Arbitration Clause that if any disputes arise, the same shall be settled by mutual consultation or by Arbitration. In the case law referred by the respondent's counsel, the words used are "shall be referred for Arbitration if the parties so determine" and "may be sought", thereby the said words used in the agreement indicate that the parties are required to reach a decision by application of mind and use of words "may be sought" imply that there is no subsisting agreement between the parties. In the case on hand, the words used are "shall be settled by mutual consultation or by Arbitration", thereby as per the said words, the Arbitration cannot be said as optional as the parties mutually agreed for the same. Hence, the above Judgments relied upon by the respondent are no way helpful to decide the case on hand, as in the present case, there is an agreement for Arbitration. Therefore, the contention of the learned counsel for the respondent is not acceptable and the parties have clearly agreed for Arbitration. Hence, this Court can appoint an Arbitrator by invoking power under Section 11 of the Act.

9. The petitioner has sent a notice to the respondent by suggesting the name of Mr.S.Mukund, Senior Advocate of Madras High Court to be appointed as Sole Arbitrator. However, the respondent neither denied the appointment of Mr.S.Mukund nor suggested any other Arbitrator, but, denied



Arb.O.P.(Com.Div.)No.731 of 2025

the existence of Deed itself. Therefore, the Arbitrator can decide the genuinity of Partnership Deed, if any ground is raised by the respondent.

10. In the result, this Arbitration Original Petition is allowed. Consequently, Mr.S.Mukund, Senior Advocate of Madras High Court is appointed as Sole Arbitrator and he is requested to adjudicate the arbitral disputes that had arisen between the parties and render arbitral award by holding sitting in the 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAH) as per Madras High Court Arbitration Proceedings Rules 2017 and fee of Sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017. No costs.

30.03.2026

Speaking / Non-speaking order

Index : Yes/No

NCC : Yes/No

mbi



Arb.O.P.(Com.Div.)No.731 of 2025

To
Mr.S.Mukund,
Senior Advocate,
Madras High Court,
Chennai.



WEB COPY



Arb.O.P.(Com.Div.)No.731 of 2025

P.DHANABAL, J.

mbi

Pre-Delivery order in
Arb.O.P.(Com.Div.)No.731 of 2025

30.03.2026