

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

ARBITRATION APPLICATION No: 109 of 2024

Between:

N. Krishna Reddy, S/o Late Sri. N.Bala Subba Reddy, Age: 68 years, Occ: Agriculture, R/o H.No.1-2-48-1/9. Srinivasa Nagar Opp. Sanghamitra School, Hyder Nagar Kukatpally Hyderabad, Telangana - 500 072.

...APPLICANT

AND

1. M/s S.R.V.S Industries, Rep by its Managing Partner N.Subba Reddy S/o Late N. Bala Subba Reddy, Age: 46 years, R/o B-8, CIE, Balanagar, Hyderabad.
2. N.Subba Reddy, Son of late N.Bala Subba Reddy, Age: 56 years, R/o Villa No.287 Hill County, Nizampet, Bachupally Mandal Medchal-Malkajgiri District Telangana - 500 090.

...RESPONDENTS

Arbitration Application filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for the reasons stated in the accompanying affidavit, praying that this Hon'ble Court may be pleased to appoint any former judge of this Hon'ble Court of its choice as Sole Arbitrator for the purpose adjudication of the Partnership disputes between the Applicant and Respondents in respect of the Deed of Admission-cum-Retirement Dated 28-12-2001 and for passing an award in the interest of justice.

Counsel for the Petitioner: Mr. K. PRABHAKAR

Counsel for the Respondents: Ms. MANJARI S GANU

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

ARBITRATION APPLICATION No. 109 of 2024

ORDER:

Mr. K. Prabhakar, learned counsel for the applicant.

Ms. Manjari S Ganu, learned counsel for the respondents.

2. This arbitration application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as, "the A&C Act"), seeking appointment of an arbitrator to resolve the disputes between the parties.

3. Facts giving rise to filing of this application briefly stated are that the parties are related to each other i.e., brothers. Partnership deed dated 28.12.2001 was executed between the parties to do the business of general engineering works in the name and style of M/s S.R.V.S. Industries. Clause 19 of the aforesaid partnership deed contains an arbitration clause, which is extracted below for the facility of reference: —

“If any dispute or differences arise between the partners with regard to constitution or interpretation of this deed or any other matter relating to partnership affairs such matters shall be referred to any Arbitrator or Arbitrators and shall be binding on all the partners alike.”

4. It is not in dispute that the applicant had earlier approached this Court by filing an arbitration application under Section 11(4) of the Act, namely, Arbitration Application No.98 of 2011, which was allowed by a Bench of this Court by order dated 06.07.2012 and Mr. Justice A. Gopal Rao, a former Judge of this Court was appointed as an arbitrator. It is also not in dispute that the proceedings pending before the aforesaid arbitrator remained inconclusive and the arbitrator appointed by this Court unfortunately expired in the year 2022. Thereafter, the applicant once again sent notice dated 02.09.2023 to the respondents seeking constitution of a fresh arbitral tribunal. The respondents gave reply to the aforesaid notice on 21.10.2023. Thereafter, this application has been filed.

5. Learned counsel for the applicant has submitted that the dispute has arisen between the parties which requires resolution in the manner agreed to by the parties.

6. On the other hand, learned counsel for the respondents has submitted that deed of dissolution was executed on 30.09.2010 and though the applicant is entitled for a sum of Rs.14,54,243/-, the respondents paid a sum of Rs.35,75,454/- towards full and final settlement. It is further submitted that the applicant himself was guilty of protracting the proceedings before the arbitrator, who was appointed by this Court in the previous proceedings, and taking advantage of the sad demise of the arbitrator, has filed this application. Therefore, the application filed by the applicant is liable to be dismissed.

7. On the other hand, learned counsel for the applicant has rebutted the submission made by the learned counsel for the respondents that the applicant has received a sum of Rs.35,75,454/- and submitted that in pursuance of the deed of dissolution the applicant has received a sum of Rs.25,50,000/-.

8. I have considered the submissions made by the learned counsel for the parties and perused the record.

9. In a proceeding under Section 11(6) of the A&C Act, this Court has to satisfy itself whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties.

10. Admittedly, execution of partnership deed dated 28.12.2001 has not been disputed. The aforesaid partnership deed contains an arbitration clause. It is trite law that an arbitration clause which forms part of the contract shall be treated as an agreement independent of other terms of contract and the arbitration clause survives notwithstanding expiry of the agreement (see **Reva Electric Car Company Private Limited vs. Freen Mobil¹, A.Ayyasamy vs. A.Paramasivam² and Vidya Drolia vs. Durga Trading Corporation³**). Therefore, notwithstanding

¹ (2012) 2 SCC 93

² (2016) 10 SCC 386

³ (2021) 2 SCC 1

the dissolution of partnership firm, the arbitration clause survives.

11. In the instant case, notice under Section 21 of the A&C Act was sent on 02.09.2023 and reply to the aforesaid notice was sent by the respondents on 21.10.2023. The dispute therefore has arisen between the parties which requires resolution in the manner agreed to by the parties.

12. Therefore, Mr. Justice P.Naveen Rao, a former Acting Chief Justice of this Court, (#3001, My Home Bhooja, Block-A, Plot Nos.22-24 & 31-33, Rayadurgam, Ranga Reddy District, Mobile No.8374012311), is appointed as sole arbitrator to adjudicate the dispute between the parties.

13. So far as the submission that the applicant himself has protracted the proceedings before the arbitrator appointed by this Court is concerned, in the absence of any record, it is not possible to infer whether the applicant or the respondents protracted the proceedings before the arbitrator appointed by this Court in previous proceedings.

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Whether the applicant has received an amount of Rs.35,75,454/- or Rs.25,50,000/- as asserted and whether the same was towards full and final settlement of the claim of the applicant, are the matters to be adjudicated by the arbitrator.

14 In the result, the arbitration application is allowed.

Miscellaneous applications pending, if any, shall stand closed. No order as to costs.

Sd/- M. VIJAYA BHASKER
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

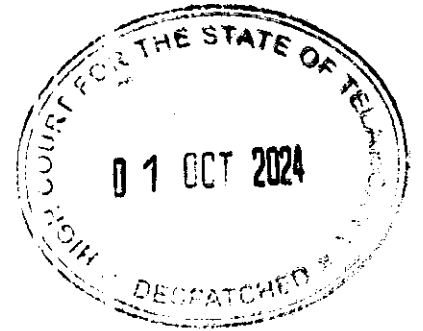
1. Mr. Justice P. Naveen Rao, a Former Acting Chief Justice, High Court for the State of Telangana at Hyderabad. Resident of #3001, My Home Bhooja, Block-A, Plot Nos.22-24 & 31-33, Raidurgam, Ranga Reddy District – 500081; Mobile No.8374012311. **(By Special Messenger) (Along with a Copy of affidavit and material papers)**
2. One CC to Mr. K. PRABHAKAR, Advocate [OPUC]
3. One CC to Ms. MANJARI S GANU, Advocate [OPUC]
4. Two CD Copies

kam/gh



HIGH COURT

DATED:20/09/2024



ORDER

ARBAPPL.No.109 of 2024

ALLOWING THE
ARBITRATION
APPLICATION

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~~REMA~~
~~10/27/2024~~