
(2015) 08 MAD CK 0184

In the Madras High Court

Case No : Original Petition No. 565 of 2014

Jayamurugan Granite Exports

APPELLANT

Vs

SQNY Granites and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(2), 20, 8, 8(2)
Arbitration and Conciliation Act, 1996 — Section 11, 11(10), 11(12)(b), 11(4), 11(5)
Civil Procedure Code, 1908 (CPC) — Section 15
Partnership Act, 1932 — Section 19, 69, 69(2), 69(3)

Citation : AIR 2015 Mad 266 : (2015) 6 ARBLR 450 : (2015) 5 CTC 1 : (2015) 4 LW 385

Hon'ble Judges : Sanjay Kishan Kaul, C.J

Bench : Single Bench

Advocate : P. Valliappan, for the Appellant; S. Ranganathan for T.S. Gopalan and Co., Advocates for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J—M/s. SQNY Granites/first respondent, a Partnership firm, was granted granite quarrying lease by the Government of Tamil Nadu by Government Order dated 27.02.2006, in respect of the patta lands measuring 2-21-0 hectares, comprised in Survey Nos. 885/2, 886/3B, 894/7, 895/1, 896/1, 896/2, 897/2, 901/1, 901/2, 901/3, 903/1, 903/2, 904/1, 904/2A, 904/2B, 904/3, 904/4A, 904/4B and 905/1 (part) situated in Keelathiruthangal village, Sivakasi Taluk, Virudhunagar District. In pursuance thereto, a lease agreement was executed on 13.03.2006, duly registered, for a period of 20 years commencing from the date of the agreement and ending on 03.02.2026. The granite to be quarried was "Multi Coloured Granite". It appears that this lease must have been operated by the first respondent for some time but an agreement came to be executed on 02.10.2013 by the first respondent, through its Partner Mr. P. Ganesan/second respondent in favour of M/s. Jayamurugan Granite Exports/the petitioner, represented by its Managing Partner Mr. P.K.

Ravichandran to be the raising contractor, due to lack of men and machinery available with the first respondent. In terms of the commercial arrangements, a sum of Rs. 5 lakhs was to be treated as standing advance without interest, to be refunded on the expiry of the agreement and another sum of Rs. 5 lakhs to be adjusted in the sale proceeds of the materials to be sold through the respondents. The commercial transaction, inter alia, required that 80% of the entire exportable and marketable production would be given to the respondent or its nominee/nominees towards raising cost of the entire production and the balance 20% would be taken by the first respondent with no amount paid for it towards raising cost falling to the share of the second respondent. The agreement was to remain valid till the expiry of the lease and was required to be renewed by mutual consent in the event of the Government of Tamil Nadu renewing the lease, but on terms and conditions to be mutually agreed upon.

2. The said agreement contains the dispute resolution clause-25 providing for the mode of arbitration by appointment of an Arbitrator by mutual consent. The said clause reads as under:

"Any dispute or difference of opinion do arise between the parties herein regarding the conditions of this agreement, the same shall be referred to an arbitrator to be appointed by mutual consent and the said arbitrator's decision shall be final and binding on both the parties."

3. It is the case of the petitioner that the first respondent had entered into a raising-cum-sale agreement dated 07.06.2006, with "M/s. Kunnam Granites", in which quarrying operations were to be carried out by engaging the petitioner. In that process, the petitioner is stated to have suffered a loss, which in terms of the sub raising cum sale contract dated 15.07.2006 with "M/s. Kunnam Granites", was to be paid by the first respondent as accepted by letter dated 21.11.2008. There are other facts also set out, but suffice to say that the petitioner suspended the quarry operations by letter dated 27.01.2014, while the first respondent terminated the agreement subsequently on 10.06.2014, which is the subject matter of dispute, the same having arisen under the agreement and would have to be determined in terms of the agreement dated 02.10.2013. Since the differences could not be resolved, the petitioner invoked the jurisdiction of this Court under Section 11(5) of the Arbitration and Conciliation Act, 1996, after having sent a legal notice dated 30.06.2014, calling upon the second respondent, as Managing Partner of the first respondent, to choose a mutually acceptable Arbitrator, to which there had been no reply from the respondents.

4. It may be noticed that originally the petition was filed by Mr. P.K. Ravichandran, as Managing Partner of the petitioner with Mr. P. Ganesan, as Managing Partner of "SQNY Granites", impleaded as the sole respondent. In the counter affidavit filed by the second respondent (then sole respondent), a plea was raised that the petition has not been properly framed and filed in terms of the agreement dated 02.10.2013 entered between the two partnership firms. It was further pleaded that the pre-requisite for appointment of an Arbitrator under

Section 11(5) of the 1996 Act had not been met and that there was no authority vested in either of the parties to submit the alleged disputes to Arbitration. A plea was also raised that the petitioner/firm was not a registered firm.

5. However, there was a second limb of the arguments arising from the fact that the petition has not been properly framed, the arbitration clause being part of an agreement dated 02.10.2013, which was between the partnership firms and the request sent for arbitration to the Managing Partner of the respondent firm who has signed the agreement was not a proper invocation.

6. In this behalf, learned counsel for the then Sole respondent (second respondent) referred to the Judgment of the learned Single Judge of the Punjab High Court in *Parmeshwar Lal and Co. Vs. Jai Narain*, AIR 1952 P&H 373 , to contend that Section 19 of the Partnership Act dealing with implied authority of a partner as an agent of the firm did not include sub-clause (a) of Sub-section (2), which deals with submission of a dispute to arbitration. However, it was simultaneously observed that where one of the Partners has referred a dispute to arbitration and the other Partners, who are aware of the arbitration proceedings, have not come forward to object to the proceedings till the passing of the award, they must be taken to have ratified the act of that Partner and are estopped from challenging the award on the ground of want of authority of the partner.

7. In *Sohan Lal Vs. Firm Madho Ram Banwari Lal and Others*, AIR 1952 P&H 240 , the observations are that there could be a ratification, but that is a question of fact.

8. In order to avoid any unnecessary dispute on that account and to obviate technical objections, this Court on 28.11.2014 permitted the change of cause title so that description of the petitioner should be as a partnership firm represented by its Managing Partner Mr. P.K. Ravichandran, while the description of the respondent would be "SQNY Granites", represented by Managing Partner Mr. P. Karvannan, but Mr. P. Ganesan, who had signed the agreement was also impleaded as the second respondent. This was so as the counsel appearing for Mr. P. Ganesan informed the Court that there had been a change of the Managing Partner. Learned counsel for the petitioner was also granted liberty to file specific authorisation of the other partner in favour of Mr. P.K. Ravichandran to act on behalf of the partnership firm.

9. It may be noticed that the aforesaid issue of description was only technical in character, as the description was the "Managing Partner" acting on behalf of the "partnership firm". The Managing Partner who had signed the agreement had been impleaded as respondent and the notice was also issued to him only in that capacity. The notice to the firm would have to be issued to somebody having authority in the firm and thus, it was issued to the purported Managing Partner.

10. In the subsequent proceedings, the counsel who had been appearing for Mr. P. Ganesan changed his stand slightly stating that now he would only represent Mr. P. Ganesan and that a separate notice should be sent to the firm through its

current Managing Partner which the court issued and another counsel entered appearance.

11. It may also be noticed that the plea earlier on affidavit was that mere inadvertent reference to Section 11(4) instead of Section 11(5) of the 1996 Act could not defeat the petition and the legal notice dated 30.06.2014 was in compliance contemplated under Section 11(5) of the 1996 Act.

12. In the counter affidavit thereafter filed on behalf of the first respondent/firm, once again the issue of non-registration of the firm was sought to be raised. It is in view thereof, I consider it appropriate to set forth that controversy, the findings on the issue of the legal principle and the consequence of the amendments which have been permitted.

13. It may further be stated that it could not really be said that the notice was improperly issued or that the notice should have been issued to all the partners of the firm when it was issued to the Managing Partner who had signed the agreement and who had duly received the notice. The plea raised in the counter affidavit that the same substantially affects the rights of the new Managing Partner of the first respondent is of little meaning, as absence of opportunity of meeting the case is a plea raised on a misconceived aspect that this court will determine the merits of the controversy, while that is a matter to be determined before the Arbitrator. It is really not in question that there was an agreement, disputes have arisen, though parties blame each other and this Court has jurisdiction. The fact that there has been no Arbitrator appointed nor was there an agreement over the same till date is really not in question. Thus the plea is meaningless.

14. Learned counsel for the second respondent (who was the counsel for the earlier sole respondent) sought to raise, what he calls a legal plea really canvassing the case for the first respondent, leaving not much in doubt about the ping-pong game being played by the two respondents, to somehow defeat the very adjudication of the dispute. The question which was raised, among other pleas, by learned counsel for the second respondent in the aforesaid manner was the plea of bar to entertain the petition under Section 11(5) of the 1996 Act on account of the petitioner firm being unregistered and which thus became the main area of controversy. Thus, the plea which was raised by the learned counsel when the respondent was the sole respondent was once again sought to be urged.

15. On the issue of maintainability raised at the threshold, arguments were heard, at which stage, learned counsel for the petitioner relied upon the Judgment of the Honourable Supreme Court in Kamal Pushp Enterprises Vs. D.R. Construction Company, AIR 2000 SC 2676 : (2000) 8 JT 347 : (2000) 5 SCALE 348 : (2000) 6 SCC 659 : (2000) 2 SCR 20 Supp : (2000) 2 UJ 1250 : (2000) AIRSCW 4012 : (2000) AIRSCW 2853 : (2000) 6 Supreme 259 : (2000) 7 Supreme 516 , which held that the effect of the non-registration of the firm as

provided under Section 69 of the Partnership Act, 1932 (hereinafter called the "Partnership Act") does not create a bar to sue for an unregistered firm in respect of proceedings of Arbitration. The relevant portion of the provision is extracted as under:

"69. Effect of non-registration:-- (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect,--

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realise the property of an insolvent partner."

The Honourable Supreme Court held that Arbitration proceedings cannot be treated as suit or other proceedings so as to enforce the rights arising under the contract and thus, Section 69 does not prohibit an unregistered firm from defending an arbitration proceedings initiated by the opposite party seeking to appoint an arbitrator in terms of the arbitration clause. It may also be noticed in the factual matrix, the Court was dealing with an award filed suo motu before the trial Court under Section 14(2) of the Arbitration Act, 1940, and the question as to whether the proceedings regarding making award a rule of the Court would be maintainable under Section 69 of the Partnership Act, 1932.

16. In the case of Smt. Premlata and another v. M/s. Ishar Dass Chaman Lal and others reported in (AIR 1955 SC 714), it has been held that the right to invoke Arbitration Clause to work out the rights in respect of a firm of which dissolution is sought, are not affected by reason of the firm being unregistered.

17. The counsel for the petitioner made reference to certain other Judgements also. In Firm Ashok Traders and Another etc. Vs. Gurumukh Das Saluja and Others etc., AIR 2004 SC 1433 : (2004) 1 ARBLR 141 : (2004) 2 CompLJ 419 : (2004) 2 CTC 208 : (2004) 2 JT 352 : (2004) 137 PLR 526 : (2004) 1 SCALE 297 : (2004) 3 SCC 155 : (2004) 50 SCL 224 : (2004) 1 SCR 404 : (2004) AIRSCW 366 : (2004) 1 Supreme 754 , it was held that the bar under Section 69

of the Partnership Act does not affect the maintainability of an application under Section 9 of the Arbitration and Conciliation Act.

18. In *Shri Mulakh Raj Vs. Smt. Shashi Rani and Shri D.S. Pawaria, Ld. Addl. District Judge, Tis Hazari Courts*, AIR 2005 Delhi 374 : (2006) 2 ARBLR 126 : (2005) 118 DLT 316 : (2005) 81 DRJ 193 : (2005) 141 PLR 2 , a Division Bench of the Delhi High Court held that the suit by one partner against the other partner of an un-registered firm seeking appointment of an Arbitrator and dissolution of the firm was not affected by the bar under Section 69 of the Partnership Act. A learned Single Judge of the Delhi High Court in Arbitration Petition No. 344 of 2009 (*Raj Pal Manchanda v. Kamal Kishore Manchanda and others*) decided on 10.08.2010 also took the same view.

19. Learned counsel for the second respondent referred to the Judgment of the Hon"ble Supreme Court in *Delhi Development Authority Vs. Kochhar Construction Work and Another*, (1998) 8 SCC 559 once again qua the issue of bar of institution of a suit by and on behalf an unregistered firm against a third party. It was held that the suit proceedings envisaged under Section 69 of the Partnership Act include proceedings under Section 20 of the Arbitration Act, 1940, and thus, the subsequent registration of the firm could not cure the defect.

20. In *U.P. State Sugar Corporation Ltd. Vs. Jain Construction Co. and Another*, AIR 2004 SC 4335 : (2004) 3 ARBLR 1 : (2004) 122 CompCas 145 : (2004) 4 CompLJ 370 : (2004) 5 CTC 356 : (2004) 7 JT 61 : (2004) 7 SCALE 307 : (2004) 7 SCC 332 : (2004) 1 SCR 826 Supp : (2004) AIRSCW 5122 : (2004) 6 Supreme 449 , a similar issue arose, where the amendment was disallowed to incorporate the subsequent registration of the firm in respect of a proceeding under Section 20 of the Arbitration Act, 1940. It was observed that the disputes having arisen between the parties to the Arbitration agreement and the application having been filed prior to the commencement of the 1996 Act, the provision of the 1940 Act would apply, and thus, the Court could not bring into aid the provisions of the 1996 Act.

21. The aforesaid judgments deal with proceedings under Section 20 of the 1940 Act and the subsequent judgment refers to the distinction between the two Acts and is law for the proposition that the earlier proceedings under the 1940 Act could not have been converted into proceedings under the 1996 Act.

22. However, in *Mohd. Monirul Hasan and others v. Mohd. Iftikar Ahmed and others* reported in (AIR 2000 Gauhati 108), the then Chief Justice of that Court opined that the bar under Section 69(2) of the Partnership Act would apply to proceedings under Section 11 of the Arbitration and Conciliation Act for appointment of an Arbitrator.

23. Learned Counsel for the petitioner referred to the Judgment of the learned Single Judge of this Court in *Texfield Engineers Vs. Texteema Engineering Industries A Partnership firm, Ramdass, Partner, Nandagopal and T.K. Seshadri, Senior Advocate, Arbitrator* , where it was held that the substantive laws have no

application at the stage of deciding the scope and content of the Arbitration Clause, as it is the Arbitrator who decides on his jurisdiction in the dispute. In the context of Section 69 of the Partnership Act, it was observed that it is not as if unregistered firms are precluded from entering into contracts. The restriction only comes in to enforce the rights under the agreement. It was thus opined that at the stage of filing of the petition under Section 11 of the 1996 Act only to name an Arbitrator, the bar under Section 69 for the enforcement of the rights arising under the agreement cannot be invoked. After appointment of Arbitrator, the question of the Arbitrator entertaining the jurisdictional issue does not arise, as he has the jurisdiction only to decide the disputes that have arisen in connection with the execution of the contract and the breach alleged thereof.

24. A reading of the aforesaid views required the matter to be examined a little more closely in terms of the some of the earlier pronouncements both under the 1940 and the 1996 Acts, to understand the basis on which the bar created by Section 69 of the Partnership Act was held to operate in respect of proceedings under Section 8(2) or Section 14 or Section 20 of the 1940 Act.

25. In the Judgment of the Hon"ble Supreme Court in Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd., AIR 1964 SC 1882 : (1964) 8 SCR 50 , the Honourable Supreme Court opined that the proceedings under the Eighth Section of the Arbitration Act has its genesis in the arbitration clause. Therefore, whether one views the contract between the parties as a whole or one views only the arbitration clause, the right to proceed to arbitration is founded only on the agreement of the parties and thus the words in Section 69(3) "a right arising from a contract" are in either sense sufficient to cover an application for the appointment of an arbitrator under Section 8(2) of the 1940 Act.

26. The Delhi High Court in Himachal Pradesh Cooperative Group Housing Society Vs. Umesh Goel and Another, (2007) 4 ARBLR 353 : (2008) 1 ILR Delhi 1353 , examined the bar created by Section 69(3) in the context of the historical perspective in which legislative changes were made - in the event of a dispute, the aggrieved party should be able to easily ascertain the names and details of persons who would eventually be liable for recoveries against the firm. Unlike a company, a partnership firm is not a distinct legal entity and its partners remain personally liable for all its debts subject to their inter se contract.

27. It is, however, noticed that a learned Single Judge of the Delhi High Court, while interpreting Section 69 of the Partnership Act, in Virendra Dresses Vs. Varindra Garments, AIR 1982 Delhi 482 : (1982) 21 DLT 472 : (1982) RLR 538 , had held that a suit for injunction on the grounds of passing off was maintainable notwithstanding non-registration of the firm because the right sought to be enforced did not stem from a contract but was available in common law. A distinction has thus been made between the enforcement of a common law right and the enforcement of a right arising under a contract.

28. The Division Bench of Delhi High Court in Himachal Pradesh Cooperative

Group Housing Society Ltd. v. Umesh Goel and Another case (supra) also took note of the pronouncement in *Viteralli v. Saton*, 359 US 535; and *Babulal Dhandhaniah Vs. Gauttam and Co.*, AIR 1950 Cal 391 : (1950) 2 ILR (Cal) 607 , where proceedings were started on an award, in one to make it a rule of the Court and in the other to get it set aside and it was held that the bar under Section 69 would not apply in such a situation as they were for enforcement of award and not to enforce rights arising from a contract. The Division Bench opined that the post Award proceedings cannot be considered by any means to be a suit or other proceedings to enforce any rights arising under a contract.

29. In *Firm Ashok Traders and another etc. v. Gurumukh Das Saluja and others etc.* (referred to supra), the Supreme Court, while examining the issue with reference to Section 9 of the 1996 Act, held that Section 69 of the Partnership Act would not affect the maintainability of the application.

30. The aforesaid Judgment recognised the fact that the 1996 Act is a long leap in the direction of alternate dispute resolution system based on the UNCITRAL Model Law and thus the decided cases under the 1940 Act have to be applied with caution for determining the issues arising for decision under the new Act.

31. The decisions referred to above, in conclusion, laid down the following principles:--

"(i) Section 69 is a bar to an application under Section 8 and Section 20 of the 1940 Act.

(ii) Section 69 is not a bar to an application under Section 14 of the 1940 Act, being a proceeding arising from the award.

(iii) Section 69 is not a bar to an application under Section 9 of the 1996 Act."

There appears to have been no direct Judgment referred to in the context of Section 11 of the 1996 Act.

32. However, guidance is available in the recent judgement of the Hon"ble Supreme Court in *State of West Bengal Vs. Associated Contractors*, AIR 2015 SC 260 : (2014) AIRSCW 5844 : (2014) 10 SCALE 394 which is discussed hereinafter. The said case dealt with the scope of Section 9 and Section 42 r/w Section 2(1)(e) of the 1996 Act.

33. In Part I of the 1996 Act, various applications are contemplated in respect of arbitration agreements and an application under Section 8 can be made before the judicial authority before which an action is brought in the matter which is the subject matter of an arbitration agreement, and the corollary drawn is that such an application need not be to Courts and would be outside the scope of Section 42. In paragraph-15 of the judgment, it has been noticed that in *State of Maharashtra v. Atlanda Ltd.*, reported in (2014) 11 SCC 619, a view has been taken that Section 2(1)(e) contains a scheme which is different from that contained in Section 15 of the Code of Civil Procedure, 1908. Section 2(1)(e)

reads as under :--

"2. Definitions.--(1) In this Part, unless the context otherwise requires,-

(a).....

(b).....

(c).....

(d).....

(e) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;"

34. In the context of Section 11 of the 1996 Act, it has been observed that while adopting the UNCITRAL Model Law on International Commercial Arbitration, it has made some departures from the Model Law. Section 11 is one such provision. The Model Law provides for making of request under Section 9(2), to "the Court or other authorities specified in Article 6 to take the necessary measure." The words in Section 11 of the Act are, "the Chief Justice or the person or institution designated by him". The fact that instead of the Court, power had been conferred on the Chief Justice has to be appreciated in the context of statute, and the framers of the statute must certainly be taken to have been conscious of the definition of "Court" in the Act. It would thus be proper to conclude that they did not want the power under Section 11 to be conferred on the District Court or the High Court exercising original jurisdiction. The intention was to confer the power on the highest judicial authority in the State and in the country, on the Chief Justices of High Courts and on the Chief Justice of India, to give greater credibility to the arbitral process.

35. It would be useful to quote paragraph 18 of SBP and S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, AIR 2006 SC 450 : (2005) 3 ARBLR 285 : (2005) 128 CompCas 465 : (2006) 2 ComplJ 7 : (2005) 5 CTC 302 : (2005) 9 JT 219 : (2005) 9 SCALE 1 : (2005) 8 SCC 618 : (2006) 1 UJ 156 : (2005) AIRSCW 5932 : (2005) 7 Supreme 610 , which has been set out in paragraph-16 of the State of West Bengal and others v. Associated Contractors case cited supra as under :

"18. It is true that the power under Section 11(6) of the Act is not conferred on the Supreme Court or on the High Court, but it is conferred on the Chief Justice of India or the Chief Justice of the High Court. One possible reason for specifying the authority as the Chief Justice, could be that if it were merely the conferment of the power on the High Court, or the Supreme Court, the matter would be governed by the normal procedure of that Court, including the right of appeal

and the Parliament obviously wanted to avoid that situation, since one of the objects was to restrict the interference by Courts in the arbitral process. Therefore, the power was conferred on the highest judicial authority in the country and in the State in their capacities as Chief Justices. They have been conferred the power or the right to pass an order contemplated by Section 11 of the Act. We have already seen that it is not possible to envisage that the power is conferred on the Chief Justice as *persona designata*. Therefore, the fact that the power is conferred on the Chief Justice, and not on the court presided over by him is not sufficient to hold that the power thus conferred is merely an administrative power and is not a judicial power.

It is obvious that Section 11 applications are not to be moved before the "court" as defined but before the Chief Justice either of the High Court or of the Supreme Court, as the case may be, or their delegates. This is despite the fact that the Chief Justice or his delegate have now to decide judicially and not administratively. Again, Section 42 would not apply to applications made before the Chief Justice or his delegate for the simple reason that the Chief Justice or his delegate is not "court" as defined by Section 2(1)(e). The said view was reiterated somewhat differently in *Pandey and Co. Builders Pvt. Ltd. Vs. State of Bihar and Another*, AIR 2007 SC 465 : (2006) 4 ARBLR 192 : (2006) 10 JT 414 : (2006) 11 SCALE 665 : (2007) 1 SCC 467 : (2006) 8 SCR 997 Supp ."

36. The further observations of the State of West Bengal and others v. Associated Contractors case as contained in paragraph-17 thereof are as under:--

"17. That the Chief Justice does not represent the High Court or Supreme Court as the case may be is also clear from Section 11(10):

"The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section(5) or sub-section (6) to him."

The scheme referred to in this sub-section is a scheme by which the Chief Justice may provide for the procedure to be followed in cases dealt with by him under Section 11. This again shows that it is not the High Court or the Supreme Court rules that are to be followed but a separate set of rules made by the Chief Justice for the purposes of Section 11. Sub-section 12 of Section 11 reads as follows:

11.(12)(a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to ""Chief Justice"" in those subsections shall be construed as a reference to the ""Chief Justice of India"".

(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate and, where the High Court itself is the Court

referred to in that clause, to the Chief Justice of that High Court."

It is obvious that Section 11(12)(b) was necessitated in order that it be clear that the Chief Justice of "the High Court" will only be such Chief Justice within whose local limits the Principal Civil Court referred to in Section 2(1)(e) is situate and the Chief Justice of that High Court which is referred to in the inclusive part of the definition contained in Section 2(1)(e). This sub-section also does not in any manner make the Chief Justice or his designate "court" for the purpose of Section 42. Again, the decision of the Chief Justice or his designate, not being the decision of the Supreme Court or the High Court, as the case may be, has no precedential value being a decision of a judicial authority which is not a Court of Record."

37. It has thus been observed in paragraph-18 that in contrast with applications moved under Sections 8 and 11 of the 1996 Act, applications moved under Section 9 are to the "court" as defined for the passing of interim orders before, during or after the arbitral proceedings.

38. If these observations are looked in the context of Section 69 of the Partnership Act, the bar created for institution of the suit or other proceedings is in respect of the same being instituted in any "courts". But the aforesaid observation shows that the power has to be exercised under Section 11 of the 1996 Act by the Chief Justice or his delegate and not by the Court. In fact, it is observed in paragraph-20 that there are a variety of reasons as to why the Supreme Court cannot possibly be considered to be "court" within the meaning of Section 2(1)(e) even if it retains seisin over the arbitral proceedings. The Judgment is to the effect that the Chief Justice does not represent the High Court or the Supreme Court, as the case may be, when exercising power under Section 11, albeit a judicial power. This is also the reason for the decision of the Chief Justice or his designate not being the decision of the Supreme Court or High Court, as the case may be, as there is no precedential value being the decision of the judicial authority, which is not a court of record.

39. In addition, as has been discussed aforesaid, the scheme of the 1996 Act is different and the process of mechanism for alternate dispute resolution system has to be construed not identical to the 1940 Act, considering the difference in their schemes.

40. I am thus of the view that non-registration of the petitioner firm would not be a bar under Section 69 of the Partnership Act for institution of proceedings under Section 11 of the 1996 Act.

41. In view of the aforesaid, an arbitrator is liable to be appointed to adjudicate the disputes inter se the parties (petitioner and respondent No. 1) and I hereby appoint Thiru Justice P. Shanmugam, a retired Judge of this Court, as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties. The arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the

Rules of the Madras High Court Arbitration Centre (MHCAC) (Arbitration Proceedings) & (Administrative Cost and Arbitrators' Fees) Rules, 2014.

42. The original petition is accordingly allowed, leaving the parties to bear their own costs.