



Arbitration Original Petition (Com.Div.) No.397 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 21.01.2026

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Arbitration Original Petition (Com.Div.) No.397 of 2023

K.Jayachandran
S/o.Balasubramaniam

... Petitioner

vs.

1.S J Infra
represented by its Managing Partner
Mr.V.Sudhakar,
Having office at No.9, Chetty Street,
Perittivakkam, Pondavakkam,
Thiruvallur – 602 026.

2.V.Sudhakar

3.Madhupriya ... Respondents

Arbitration Original Petition (Com.Div.) filed under Section 34 of the Arbitration and Conciliation Act, 1996, praying to set aside the Arbitral Award dated 23.01.2023 without bearing number passed by Mr.P.J.Rishikesh, Sole Arbitrator, No.10A, 14th Avenue, Harrington Road, Chetpet, Chennai – 600 031, in its entirety.

For Petitioner : Mr.M.Santhanaraman

For Respondents : Mr.S.Burno Cruz



ORDER

WEB COPY The petitioner assails the award passed by the Sole Arbitrator dated 23.01.2023 by filing this petition under Section 34 of the Arbitration and Conciliation Act, 1996 [for brevity 'the Act'].

2. The petitioner is the claimant. The case of the petitioner is that he along with the second respondent entered into a partnership and a partnership deed dated 19.07.2017 came into force through which a firm in the name and style of 'S J Infra' was constituted. The first respondent firm was involved in the business of carrying out civil contract works with the State and Central Government Departments. It was registered as a Class-I Civil Contractor and also registered with Public Works Department. This firm was declared as the successful bidder for three works and the firm was maintaining a joint account in a bank which can be operated by both the partners jointly.

3. During August 2019, the petitioner came to know that the cheques of the firm are being used without his signature. Hence, the petitioner contacted the Manager of Andhra Bank and he was informed that the first respondent firm has been reconstituted by inducting the third respondent, who is the wife of second respondent and that the petitioner



has resigned from the partnership firm under a reconstitution deed dated

WEB COPY 03.06.2019.

4. The specific case of the petitioner is that this reconstitution deed is a fabricated document and blank stamp papers in which the petitioner had signed were misused and it was prepared. Immediately, the petitioner issued a letter dated 14.08.2019 to the Andhra Bank to freeze the bank account and accordingly, the bank account was frozen.

5. The respondents filed an application under Section 9 of the Act in O.A.No.790 of 2019 and on consent given by both sides, a Sole Arbitrator was appointed by an order dated 18.10.2019 to resolve the dispute between the parties.

6. The petitioner filed a claim petition and made the following claims:

- i) Declare the Deed of Reconstitution dated 3.6.2019 where under the claimant has allegedly resigned from the firm and the 3rd respondent herein has been inducted as partner, as fabricated, manipulated, not supported by any consideration as alleged and not binding on the claimant;



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ii) Direct the respondent herein to produce the accounts of the 1st respondent firm herein from 1.6.2019 to till date and direct that the claimant should be paid 50% share out of the profit earned by the 1st respondent firm during the said period viz., from 1.6.2019 to till date.

7. The respondents filed statement of defence and took a stand that the petitioner after having consciously signed the reconstitution deed dated 03.06.2019 is trying to wriggle out of the same. Apart from that, the petitioner was a dormant partner and he did not contribute anything to the firm. It was further stated that the petitioner is making false allegations as if the reconstitution deed is a fabricated document. Once the petitioner has resigned from the firm, he can never be a signatory of any cheque. Apart from that, at the time of reconstitution of the firm, there were no dues payable to the petitioner and whatever amount was payable to the petitioner has already been fully paid. Accordingly, the respondents sought for dismissal of the claim petition.



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WEB COTM 8. The Sole Arbitrator, based on the pleadings, framed the following issues:

- “a. Whether the disputes are Arbitrable in nature?
- b. Whether it is permissible for the claimant to invoke the Arbitration Clause after his exit from the Partnership firm?
- c. Whether the reconstituted partnership deed dated 03.06.2019 is fabricated?
- d. Whether the claimant is entitled for 50% of the share out of the profits from the 1st Respondent firm from 1.6.2019?
- e. To what other reliefs?”

9. The Sole Arbitrator, in the proceedings dated 08.04.2021, also framed an additional issue as follows:

“Whether the respondents have actually settled the amount as mentioned in the alleged reconstitution deed to the claimant?”

10. The petitioner examined CW-1 and marked Exs.C1 to C10. The respondents examined RW-1 and Exs.R1 to R20 were marked.

11. The Sole Arbitrator rejected the claims made by the petitioner through the impugned award dated 23.01.2023. Aggrieved by the same, the present petition has been filed before this Court.



12. Heard learned counsel appearing on either side.

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13. The main issue that arises for consideration, after taking note of the submissions made on either side and the materials available on record and also the award passed by the Sole Arbitrator is, whether the Sole Arbitrator was right in rejecting the stand taken by the petitioner to the effect that the reconstitution deed is a fabricated document and the other important issue is as to whether the Sole Arbitrator in spite of framing an additional issue touching upon the consequences of the reconstitution deed, failed to deal with that issue and render findings and thereby, the award suffers from patent illegality.

14. The specific stand taken by the petitioner is that the reconstitution deed dated 03.06.2019 is a fabricated document. It is not in dispute that the signature found there is not disputed by the petitioner and what is disputed by the petitioner is the contents of the document since according to the petitioner, signed blank stamp papers have been misused and this deed has been fabricated behind the back of the petitioner.

15. Since the petitioner has taken a stand that the reconstitution deed is a fabricated document, the burden of proof will fall on the



petitioner to substantiate the same. The petitioner has attempted to substantiate the stand taken through his conduct. According to the petitioner, he came to know during first week of August'2019 that cheques are being issued without his signature by the first respondent firm. On enquiry, he was informed about the reconstitution deed by Andhra Bank. The petitioner issued a letter dated 14.08.2019 [Ex.C7] to Andhra Bank to freeze the bank account. On receipt of this letter, the Andhra Bank had frozen the bank account of the first respondent firm. Apart from that, the petitioner gave a complaint [Ex.C8] to the Assistant Commissioner of Police on 02.09.2019 to the effect that the respondents 2 and 3 have fabricated a document and have cheated the petitioner and committed criminal breach of trust. The petitioner had also given objection to the Office of Sub-Registrar (Ex.C9) not to register any documents pertaining to the property belonging to the first respondent firm.

16. The Sole Arbitrator, on appreciation of evidence and on the ground that the petitioner did not question the signature found in the reconstitution deed, came to a conclusion that the petitioner did not discharge the burden of proof and accordingly, the validity of the reconstitution deed was upheld.



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17. The Sole Arbitrator, through proceedings dated 08.04.2021, had framed an additional issue, which has been extracted supra. This additional issue gains a lot of significance since it deals with the fallout of the reconstitution deed wherein the Tribunal was expected to determine as to whether the respondents had settled the amount as mentioned in the reconstitution deed, in favour of the petitioner.

18. The Sole Arbitrator was called upon to broadly examine two important issues. The first issue touches upon the legality of the reconstitution deed. The second issue touches upon the aftermath of the reconstitution deed, which contemplated settlement of amount in favour of the petitioner by the respondents. The additional issue assumes a lot of significance in view of the fact that the petitioner had questioned the very reconstitution deed itself on the ground that it was a fabricated document. While deciding that issue, the fact as to whether any amount payable to the petitioner pursuant to the reconstitution deed, also will give a clear indication as to whether the amount was actually settled in favour of the petitioner and in which event, it will be an additional factor to uphold the validity of the reconstitution deed. In the absence of settlement of amount, it will become yet another ground for the petitioner to question the legality of the reconstitution deed.



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19. It will be beneficial to take note of the relevant clause in the reconstitution deed and the stand taken by the respondents in the statement of defence in this regard. The relevant clause in the reconstitution deed is extracted hereunder:

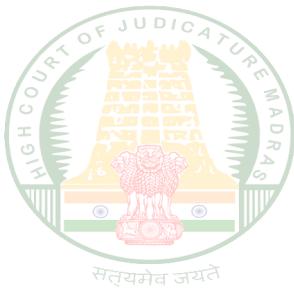
“AND WHEREAS the Party of the Second party (outgoing partner), have offered to retire on personal ground and it is mutually accepted by the other parties. The outgoing partner have verified the books of accounts and hereby acknowledge that the amount payable to them has been fully paid by the incoming partner. And the outgoing partner do not have any objections in continuing the partnership business under the same name and style and at the same premises taking over the assets and liabilities of the firm as a going concern. The outgoing partner hereby relinquish all their rights and ownership in the partnership property in favour of the Incoming Partner.”

The relevant portion in the statement of defence is extracted hereunder:

“6. The respondents reiterate that there were no dues to the claimant who confirmed the same by executing the reconstitution deed voluntarily and with full knowledge of the contents.”

“9. The Claimant had verified the books of accounts and acknowledged that the amount payable to him had been fully paid. The Claimant as “outgoing partner” did not have any objection in the 2nd and 3rd Respondents continuing the partnership business under the same name and style and at that the same premises taking over the assets and liabilities of the firm as a going concern.”

20. Even though there seems to be a contradiction between the relevant clause in the reconstitution deed and the stand taken in the statement of defence, the sum and substance of the defence taken is that all the amounts have been fully paid to the petitioner.



21. Unfortunately, the Sole Arbitrator neither extracted the additional issue in the award nor dealt with the same on the basis of the pleadings and evidence adduced by both sides. The Sole Arbitrator only dealt with the main issues that were framed initially and has completely left out the additional issue that was framed through proceedings dated 08.04.2021. As a result, the Sole Arbitrator did not deal with the consequence of the reconstitution deed where it was contended by the respondents that all the amounts due and payable to the petitioner has been fully paid. The petitioner, who is questioning the legality of the reconstitution deed, obviously is also questioning the stand taken by the respondents as if the amount has been fully paid to the petitioner. The Sole Arbitrator ought to have decided this additional issue since the finding rendered for this additional issue will also have a direct bearing on the legality or otherwise of the reconstitution deed. If the settlement had taken place, it will only add strength to the finding of the Sole Arbitrator that the reconstitution deed is a valid document. If the amount has not been settled, it will add strength to the stand taken by the petitioner to the effect that the reconstitution deed is a fabricated document.



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22. In the considered view of this Court, the Sole Arbitrator, without dealing with the additional issue has rendered findings and the same certainly vitiates the award and it results in patent illegality. The finding rendered by the Sole Arbitrator on the legality of the reconstitution deed without dealing with the additional issue also afflicts the award with patent illegality.

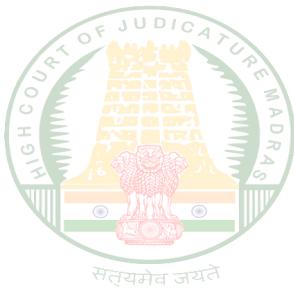
23. The conspectus of the above discussion will lead to the only conclusion that the award passed by the Sole Arbitrator is liable to be interfered by this Court on the ground of patent illegality under Section 34(2)(a) of the Act and accordingly, the award dated 23.01.2023 passed by the Sole Arbitrator is set aside.

24. It will be left open to the parties to take steps to initiate fresh arbitration proceedings and agitate their respective rights and claims.

In the result, this petition is allowed. In the facts of the case, no order as to costs.

21.01.2026

NCC: Yes/No
gm



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gm

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