

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 16TH DAY OF MAY, 2023
BEFORE
THE HON'BLE MR JUSTICE S.G.PANDIT
CIVIL MISC. PETITION NO.500 OF 2021

BETWEEN:

JAMEELA
W/O LT HAJEE S IBRAHA1M
AGED 46 YEARS
R/AT FLAT NO 503
PLAMA OCEANIC APARTMENT
BEJAJ KAPIKAD BEJAJ
MANGALURU 575004.

...PETITIONER

(BY SRI KETHAN KUMAR, ADV.)

AND:

- 1 . SULLIA AFSA @ HAFSA.B
W/O FAZUL RAHEEM KADAVATH
- 2 . DR.AFRA SHIBIN [MBBS]
D/O FAZUL RAHEEM KADAVATH
AGED 26 YEARS
- 3 . ANEES ABDULLA KADAVATH
S/O FAZUL RAHEEM KADVATHA
AGED 23 YEARS
- 4 . AMEENA ZUHA
D/O FAZUL RAHEEM KADAVATH

RESPONDENT Nos.1 TO 4 ARE
R/AT NO 3-152, SAMPYA HOUSE
ARAPU, PUTTUR TALUK-574210.

...RESPONDENTS

(BY SRI.SACHIN.B.S., ADV.)

THIS PETITION IS FILED UNDER SEC.11(5) AND (6) OF THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING TO APPOINT A DISTRICT JUDGE AS SOLE ARBITRATOR TO ARBITRATE THE DISPUTE BETWEEN THE PARTIES AS PER THE PARTNERSHIP DEED DATED 15.06.2020 OR IN ALTERNATIVELY TO APPOINT A COMPETENT A COMPETENT QUALIFIED PERSON AS A SOLE ARBITRATOR TO ARBITRATE THE DISPUTE BETWEEN THE PARTIES AS DEEM FIT IN THE CIRCUMSTANCES OF THE CASE; AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON **18/04/2023** COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner claiming to be wife of one late Hajee S. Ibrahim is before this court under Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996 (for short '1996 Act') praying to appoint a District Judge as sole arbitrator to arbitrate the dispute between the parties as per the partnership deed dated 15.06.2020.

2. Heard learned counsel Sri Ketan Kumar for petitioner and Sri Sachin B.S. learned counsel for respondent Nos.1 to 4. Perused the petition papers.

3. Facts of the case are that the petitioner claims she married one Sri Hajee S. Ibrahim on 14.05.2016 at Baithul Rahiman Masjid, Simpya at Puttur taluk. It is stated that petitioner was the second wife to late Hajee S. Ibrahim and on the death of his first wife the said Hajee S. Ibrahim married the petitioner. The said Hajee S. Ibrahim died on 23.09.2020 due to Covid-19 leaving behind the petitioner and his two children including the first respondent.

4. It is submitted that late Hajee S. Ibrahim to run a hospital and medical centre in the agricultural property purchased by him at Aryapu village of Puttur Taluk, entered into a partnership dated 15.06.2020 with the respondents herein. The partnership deed was registered on 13.08.2020. The properties i.e., 0.14 acres in Sy.No.7/1, 0.20 acres in Sy.No.6/2 and

0.50 acres in Sy.No.10/2A of Aryapu village of Puttur taluk purchased in the name of grand children of Hajee Ibrahim, were handed over to the partnership firm by respondents as their share of capital. It is stated that late Hajee Ibrahim had 45% share in the firm and had solely invested for establishing the medical centre.

5. On the death of the said Hajee Ibrahim Managing Partner of the partnership firm, the petitioner being second wife requested the respondents to reconstitute the partnership and the petitioner also claimed partition of the firm properties. When the respondents refused, the petitioner got issued legal notice dated 27.10.2021 invoking Arbitration Clause-18 and calling upon the respondents to consent for appointment of arbitrator. The respondents said to have replied on 06.11.2021 denying the rights of the petitioner and refused to

dissolve the partnership firm. As the respondents refused to consent for appointment of arbitrator, the petitioner is before this court in this petition.

6. The learned counsel for the petitioner contended that petitioner is the second wife of late Hajee Ibrahim, who had entered into partnership with the respondents under deed of partnership dated 15.06.2020 with an intention to start a new General Hospital and Medical Centre at Puttur. As Hajee Ibrahim died due to Covid-19 on 23.09.2020, the petitioner being the wife of the said Hajee Ibrahim, requested the respondents for dissolution of the firm and claimed partition of the firm properties. It is submitted that on refusal by the respondents to dissolve the firm, the petitioner would be entitled to invoke arbitration clause and for appointment of sole arbitrator to resolve the dispute between the

petitioner and respondents. Learned counsel for the petitioner referring to Section 40 of the 1996 Act, would submit that the arbitration agreement shall not be discharged by the death of any party and it would be enforceable by or against the legal representatives of the deceased. It is submitted that the petitioner being one of the legal representatives could invoke arbitration clause. Learned counsel would refer to clause-18 of the deed of partnership and submits that the same provides for resolution of dispute by a sole arbitrator. Learned counsel for the petitioner would invite attention of this court to gift deed dated 12.06.2019 executed by late Hajee Ibrahim in favour of the petitioner wherein late Hajee Ibrahim described the petitioner as his wife. Therefore, he submits that the petitioner would be entitled to invoke arbitration clause. Hence, he requests for appointment of sole arbitrator to resolve the dispute

among the petitioner and respondents and to dissolve the partnership firm.

7. Learned counsel Sri B.S. Sachin for respondents would submit that the respondents deny the status of petitioner as wife of late Hajee Ibrahim. It is submitted that late Hajee Ibrahim never married the petitioner and the petitioner was working as maid in the late Hajee Ibrahim's house. Learned counsel would contend that unless the petitioner proves her status as wife of late Hajee Ibrahim, the petitioner could not seek for appointment of arbitrator. Learned counsel submits that when the respondents deny the status of the petitioner as second wife of Late Hajee Ibrahim, the dispute relating to matrimonial matter would not be within the jurisdiction of arbitrator or arbitration tribunal.

8. Learned counsel would further contend that assuming that the petitioner could invoke arbitration clause and seek appointment of arbitrator, there is no arbitrable dispute since clause-13 of the partnership deed would state that in the event of death, retirement, insolvency or lunacy of the first partner (i.e., Hajee S. Ibrahim) the firm shall not be dissolved but the same shall be continued by other partners and his share of profit, capital account and assets shall be transferred to remaining partners equally. Therefore, it is submitted that when the partnership would not permit dissolution and provides for transferring of first partner's profit or assets to remaining partners, the petitioner cannot raise any dispute. Learned counsel would submit that as the petitioner seeks specifically for dissolution of the firm and share in the assets of the firm, no such dispute could be raised in terms of clause-13 of the partnership deed. Further the learned

counsel would submit that the suit filed by the petitioner in O.S.No.217/2021 on the file of the Senior Civil Judge at Mangalore for partition and permanent prohibitory injunction, including the property involved in this petition is pending, wherein the respondents deny the status of the petitioner as second wife and the status of the petitioner is yet to be decided. Thus, the learned counsel prays for dismissal of the petition.

9. Having heard the learned counsels for the parties and on perusal of the petition papers the only point that falls for consideration is as to whether the petitioner would be entitled for appointment of sole arbitrator to resolve the dispute raised by the petitioner in terms of the partnership deed dated 15.06.2020.

10. The answer to the above point would be in the negative and the petitioner would not be entitled for appointment of arbitrator as prayed in the petition.

11. The petitioner claims that she is the second wife of late Hajee S. Ibrahim and claims that she married him on 14.05.2016. Respondent No.1 is the daughter of Hajee S. Ibrahim from his first wife and respondent Nos.2 to 4 are grand children of Hajee S. Ibrahim. Under Annexure-A deed of partnership dated 15.06.2020 entered into between late Hajee S. Ibrahim and respondents 1 to 4, Late Hajee S. Ibrahim is the first and Managing Partner. Partnership is for the purpose of establishing hospital and medical centre at Puttur.

12. Clause-18 of partnership deed dated 15.06.2020 provides for resolution of dispute arising from the partnership deed among the

partners. In terms of Section 40 of 1996 Act legal representative could enforce arbitration clause. Whether petitioner is a legal representative, who claims that she is second wife of late Hajee S. Ibrahim, is to be decided as the respondents have denied the status of the petitioner as second wife of late Hajee S. Ibrahim. When a question arises as to whether any person is or is not a legal representative of a deceased person, such question shall have to be determined first. The Hon'ble Apex Court in a case reported in **(2021) 2 SCC 1 (Vidya Drolia and others vs. Durga Trading Corporation)** indicated the subject matters which are arbitrable and which are not arbitrable. The Hon'ble Apex Court has broadly held that where the decision would be in rem and are a declaration to the world at large, are not arbitrable. Relevant paragraph 77 reads as follows:

"77. Applying the above principles to determine non-arbitrability, it is apparent that

insolvency or intracompany disputes have to be addressed by a centralised forum, be the court or a special forum, which would be more efficient and has complete jurisdiction to efficaciously and fully dispose of the entire matter. They are also actions in rem. Similarly, grant and issue of patents and registration of trade marks are exclusive matters falling within the sovereign or government functions and have erga omnes effect. Such grants confer monopoly rights. They are non-arbitrable. Criminal cases again are not arbitrable as they relate to sovereign functions of the State. Further, violations of criminal law are offences against the State and not just against the victim. Matrimonial disputes relating to the dissolution of marriage, restitution of conjugal rights, etc. are not arbitrable as they fall within the ambit of sovereign functions and do not have any commercial and economic value. The decisions have erga omnes effect. Matters relating to probate, testamentary matter, etc. are actions in rem and are a declaration to the world at large and hence are non-arbitrable."

No doubt, Section 40 of the 1996 Act, provides for enforcement of arbitration agreement by or against legal representatives. In the case on hand, the status of the petitioner as legal representative is under dispute and the petitioner is yet to establish that she is one of the legal representative of late Hajee S. Ibrahim. Admittedly, suit in O.S.No.217/2021 for partition filed by petitioner is pending, wherein the status of the petitioner would be determined. Matrimonial disputes and disputes relating to status of a party or status as legal representative would not be arbitrable dispute and they would fall within the function of court. Only on determination of the status of the petitioner as legal representative or wife of late Hajee Ibrahim, the petitioner could invoke the arbitration clause, if the petitioner establishes that there is arbitrable dispute.

13. Under Section 11 (5) and (6) of 1996 Act, *prima facie* it is to be concluded that there exists

arbitrable dispute for resolution by appointment of arbitrator. Clause-18 of the partnership deed provides for resolution of dispute among the partners by appointment of sole arbitrator. The dispute raised by the petitioner is with regard to dissolution of the firm and share in the properties of the firm on the death of Hajee S. Ibrahim. Clause-13 would not provide for dissolution of the partnership firm on the death of first partner and would provide for transfer of first partner's share of profit, capital account balance and assets among remaining partners equally. Clause-13 reads as follows:

"13. In the event of death, retirement, insolvency, or lunacy of the FIRST PARTNER the firm shall not be dissolved but the same shall be continued by the other partners and his share of profit, capital account balance and assets of the partnership firm shall be transferred to remaining partners equally."

In terms of the above clause, the petitioner who claims as second wife of late Hajee Ibrahim, the first partner of the firm, would not be in a position to seek dissolution of the firm and to claim partition of the properties of the firm. Partners of the firm are bound by the terms or clauses of the partnership deed, unless it is contrary to law. Though the partnership deed provides for appointment of arbitrator, the arbitrator could resolve the dispute or disputes in terms of the clauses of the partnership deed. The power of the arbitrator to resolve the dispute flows from the clauses of the partnership deed. When the partners themselves have agreed under the partnership deed dated 15.06.2020 that on the death of first partner (i.e., Late Hajee Ibrahim) firm shall not be dissolved and the same shall be continued by remaining partners and first partner's share of profit, capital account balance and assets of the firm shall be

transferred to remaining partners equally, the petitioner cannot seek for dissolution of the firm and could not seek partition of the assets of the firm. Arbitration Clause-18 shall have to be read along with clause-13. If both the clauses are read together, I am of the view that petitioner could not raise dispute with regard to dissolution of the firm or seek partition of the assets of the firm.

14. For the reasons recorded above, I am of the view the petitioner failed to satisfy the conditions of section 11 (5) and (6) of 1996 Act and has not made out any ground to appoint Arbitrator. Accordingly, CMP stands rejected.

**Sd/-
JUDGE**

Swk